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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEBRASKA
3 AT OMAHA, NEBRASKA

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9 GUILLERMO HERRERA, III,)
10)
11 Plaintiff,)
12)
13 VS.)Case No.
14)8:15-cv-426-JMG-CRZ
15 UNION PACIFIC RAILROAD)
16 COMPANY, a Delaware)
17 corporation,)
18)
19 Defendant.)

20 DEPOSITION OF JOSEPH LINFORD,
21 taken on behalf of the Plaintiff, at 9431 Haven
22 Avenue in the City of Rancho Cucamonga,
23 California, commencing at 9:02 a.m. and concluding
24 at 11:12 a.m. on JUNE 9, 2016, before VICTORIA
25 IMHOF WERTZ, RPR, CSR No. 7999.

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1 APPEARANCES
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22 Also present: Jerry R. Pritchett;
23 Christobal Rivero,
24 video technician
25

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7 dated May 2014
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10 attached for witness' perusal only)
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15 UNANSWERED QUESTIONS
16 (None)
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09:04:20	1	RANCHO CUCAMONGA, CALIFORNIA	09:06:09	1	Q And can you tell the jury a little bit
09:04:20	2	THURSDAY, JUNE 9, 2016	09:06:11	2	about what gang 8501 is? What it does? What it
09:04:20	3	9:02 A.M.	09:06:16	3	consists of?
09:04:20	4		09:06:17	4	Just briefly. We will get into it much --
09:04:32	5	THE VIDEOGRAPHER: Good morning. We are	09:06:20	5	A Sure.
09:04:33	6	on the record at 9:02 a.m. Today's date is	09:06:22	6	8501 is considered a steel gang, so one of
09:04:38	7	June 9th, 2016. My name is Christobal Rivero. I	09:06:24	7	our main jobs is going around replacing steel track
09:04:42	8	am the video technician with Imhof & Associates	09:06:27	8	throughout the railroad. We also do a pad
09:04:46	9	located in Yorba Linda, California.	09:06:30	9	replacement jot. We worked with Karsco equipment,
09:04:49	10	We are recording these proceedings at 9431	09:06:30	10	replacing pads, as well, on concrete ties.
09:04:53	11	Haven Avenue, Rancho Cucamonga, California.	09:06:36	11	Q Okay.
09:04:57	12	This is media one for the videoed	09:06:36	12	We are going to talk about that a little
09:04:59	13	deposition of Joe Linford in the action entitled,	09:06:38	13	more detail.
09:05:01	14	"Guillermo Herrera, III, versus Union Pacific	09:06:39	14	This accident happened in Kansas. And we
09:05:04	15	Railroad Company."	09:06:42	15	are taking your deposition in Cucamonga,
09:05:05	16	This deposition is being taken on behalf	09:06:45	16	California.
09:05:07	17	of the Defendants (sic). And the case number is	09:06:46	17	Can you explain to the jury how 85 -- gang
09:05:09	18	8:15-cv-426-JMG.	09:06:51	18	8501 moves around the UP system?
09:05:15	19	Now, may I please have introductions for	09:06:55	19	A We are called a system gang. So anywhere
09:05:17	20	the record beginning with counsel?	09:06:58	20	within the rail northwest, we can travel and do
09:05:18	21	MR. COX: I'm Jim Cox.	09:07:01	21	different work locations. So a variety of states
09:05:22	22	I'm Guillermo Herrera's lawyer. And	09:07:04	22	that we work in.
09:05:25	23	deposition being taken on behalf of the	09:07:05	23	Q What states comprise rail northwest on the
09:05:27	24	Plaintiff.	09:07:09	24	Union Pacific Railroad?
09:05:28	25	MR. SCHMITT: I am Jim Schmitt on behalf	09:07:11	25	A Oh, Jeez. Name them all?
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09:05:31	1	the of the Union Pacific Railroad Company.	09:07:14	1	Q Just, like, is it a region?
09:05:44	2	THE VIDEOGRAPHER: Thank you.	09:07:15	2	A It is. Pretty much everything on rail
09:05:45	3	Ms. Reporter, please administer the oath.	09:07:18	3	northwest territory besides Texas.
09:05:45	4		09:07:23	4	Q How long have you worked for the UP?
09:05:45	5	JOSEPH LINFORD,	09:07:26	5	A I have worked for UP for over 19 years.
09:05:45	6	called as a witness herein, having	09:07:29	6	Q Tell me a little bit about the jobs that
09:05:45	7	first been duly sworn, was examined	09:07:32	7	you have had.
09:05:45	8	and testified as follows:	09:07:32	8	A I started as a track man. I came up as a
09:05:45	9		09:07:34	9	machine operator. I followed suit to an assistant
09:05:45	10	DIRECT EXAMINATION	09:07:38	10	foreman, foreman and then to an ARSA.
09:05:45	11	BY MR. COX:	09:07:42	11	Q Is your position now an ARSA position?
09:05:47	12	Q Mr. Linford, good morning.	09:07:45	12	A Yes, ARSA/supervisor, same title.
09:05:48	13	A Good morning.	09:07:50	13	Q All right.
09:05:49	14	Q Give us your full name, please.	09:07:53	14	Now, in July of 2015, the period of time
09:05:52	15	A Joseph Robert Linford.	09:07:55	15	that we are interested in, the gang is working in
09:05:54	16	Q Where do you live? I just need the town.	09:08:00	16	Onaga, Kansas.
09:05:57	17	A Acton, Wyoming.	09:08:04	17	Am I pronouncing that right?
09:05:59	18	Q Who do you work for now?	09:08:06	18	A You are.
09:06:00	19	A Union Pacific.	09:08:07	19	Q And my understanding is the gang had moved
09:06:00	20	Q What is your job position with the UP now?	09:08:10	20	from California to Onaga, Kansas, over a half. And
09:06:03	21	A It is a track supervisor for the Rail	09:08:18	21	that July 24th, 2015 was the first day the gang was
09:06:04	22	Northwest.	09:08:24	22	back to, work -- back to work in working in Onaga,
09:06:05	23	Q All right.	09:08:29	23	Kansas?
09:06:05	24	What was your job in July 2015?	09:08:29	24	A I believe if my memory serves me
09:06:07	25	A Same job. Same position.	09:08:31	25	correctly, the 24th was not for the entire gang.

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09:08:35	1	It was a travel day. I believe we brought 10 to 12	09:10:22	1	still trying to run track. So the Harriman
09:08:39	2	guys in to start the unloading process, unloading	09:10:22	2	Dispatch Center develops curfew for us to work
09:08:41	3	equipment off our train and getting ready, so I	09:10:25	3	where they are not running trains.
09:08:44	4	think the majority of the gang showed up the 25th.	09:10:26	4	Q Is that the same as a window?
09:08:49	5	Q Explain to the jury how this gang 8501,	09:10:28	5	A Correct.
09:08:52	6	this steel gang works.	09:10:28	6	Q Or a period of track and time?
09:08:53	7	What I'm working for here is the T-1, T-2	09:10:31	7	A Correct.
09:08:54	8	halves.	09:10:31	8	Q All right.
09:08:55	9	Could you explain that to the jury how	09:10:32	9	Explain that to the jury a little bit
09:08:55	10	that works?	09:10:33	10	about how -- obviously when the steel gang is
09:08:55	11	A How the halves work?	09:10:35	11	working on the track, you are picking up old rails
09:08:57	12	Q Yes, sir.	09:10:39	12	and laying down new rails --
09:08:57	13	A So a T-1 or T-2, you basically compress	09:10:42	13	A Correct.
09:09:01	14	your hours into a workweek. So the majority would	09:10:43	14	Q -- essentially?
09:09:04	15	be average workweek would be the first eight days	09:10:43	15	A Correct.
09:09:07	16	to the month or the second eight days of the month	09:10:44	16	Q So obviously, trains can't move on that
09:09:09	17	followed by seven rest days.	09:10:46	17	track?
09:09:13	18	Q When you say you compress your hours, what	09:10:47	18	A Correct. So we will pick up a block and
09:09:14	19	do you mean?	09:10:49	19	track of time, say, usually from a CP point to a CP
09:09:15	20	A Take a 40-hour week for two weeks and	09:10:54	20	point, approximately five miles, 10 miles and we
09:09:16	21	compress your hours if you have got an 80-hour	09:10:56	21	will own that period of railroad where trains
09:09:16	22	half, pay half or 88 half, pay half. And we will	09:10:59	22	cannot come in on us, but we have to finish our
09:09:20	23	compress that down into eight days.	09:11:01	23	work to get the trains moving through that log or
09:09:24	24	Q I see.	09:11:01	24	give up your track and time.
09:09:24	25	So that means in those eight days, they	09:11:02	25	Q At the end of your curfew or window or
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09:09:26	1	will either work ten hours a day or 11 hours?	09:11:05	1	track and time, you have to have the track buttoned
09:09:29	2	A Correct.	09:11:08	2	up so that trains can again move on it for the
09:09:30	3	Q And that's straight time?	09:11:12	3	period of time that day that you all are not
09:09:32	4	A Correct.	09:11:15	4	working on it?
09:09:32	5	Q Are there circumstances where employees on	09:11:16	5	A Correct.
09:09:35	6	that gang will have to work more than the 10 or 11	09:11:17	6	Q All right.
09:09:38	7	hours straight time?	09:11:18	7	And then where are the machines stored?
09:09:40	8	A Sure. There is some overtime involved in	09:11:19	8	A Usually in siding tracks.
09:09:42	9	construction work.	09:11:23	9	Q So in a typical day, once you get your
09:09:44	10	Q What creates the need for overtime on a	09:11:29	10	curfew or window of time on the track, you have to
09:09:48	11	steel gang?	09:11:33	11	bring the machines from the siding to where you are
09:09:48	12	A It could be depending on -- we work under	09:11:36	12	going to be -- begin working, do your work for that
09:09:50	13	curfews. Say you are curfew late, and you are	09:11:40	13	period of time, stop working in time to get the
09:09:53	14	trying to button up the track. Of course, we can't	09:11:43	14	machines off the track and back into the siding
09:09:56	15	be done with our job until our work is complete.	09:11:45	15	within that window?
09:09:59	16	So if you are running late that day, you still have	09:11:46	16	A That is correct.
09:10:01	17	to complete the job at hand before you are	09:11:59	17	Q What -- let's say -- all right -- 8501,
09:10:04	18	off-duty -- is what drives overtime law.	09:12:06	18	steel gang 8501 -- look, were you all working T-1
09:10:06	19	Q You are the first witness I have done	09:12:13	19	or T-2? Or am I mixing? How --
09:10:08	20	today, so you are going to have to do a lot of	09:12:17	20	A It would have been on -- if it was the
09:10:10	21	explaining to the jury, but you are good at it, so	09:12:18	21	25th, it would have been a T-2 schedule.
09:10:13	22	I'm going to ask you to do it.	09:12:21	22	Q Okay.
09:10:15	23	When you say "curfew," what do you mean by	09:12:23	23	Does anybody on the UP do any work while
09:10:17	24	"curfew"?	09:12:27	24	the 8501 steel gang is off work to prepare for the
09:10:19	25	A Curfew is we worked on tracks and we are	09:12:33	25	next 10 or 11 days that the gang will be back

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09:12:38 1 working?

09:12:38 2 A I think your term on that would be, like,

09:12:41 3 an "off cycle gang." And no, we do not have an

09:12:45 4 off-cycle gang that helps us out.

09:12:47 5 Now, there are gangs outside of the

09:12:49 6 Union Pacific that are working an opposite

09:12:50 7 schedule, but they are not doing anything that

09:12:55 8 requires what we are doing.

09:12:56 9 Q All right.

09:12:57 10 Now let's talk a little bit about -- how

09:12:58 11 long have you been on steel gang 8501?

09:13:05 12 A I can't remember the exact time frame, but

09:13:07 13 it would have been around the 2002 to 2003 to

09:13:11 14 current date.

09:13:12 15 Q Define for me a little better what your

09:13:14 16 job responsibilities are on steel gang 8501?

09:13:18 17 A So I'm a track supervisor. So anywhere

09:13:21 18 from the planning communication with Harriman,

09:13:28 19 ensuring the employees are following the correct

09:13:31 20 procedures, correct rules.

09:13:35 21 Q Are you on-the-job, on-site supervisor?

09:13:38 22 A Yes, sir.

09:13:39 23 Q Give me the chain of command on this gang.

09:13:45 24 You know, today we are going to talk to

09:13:47 25 Mr. Rolow or -- today Mr. Diaz, tomorrow,

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09:13:51 1 Mr. Rolow, Bobby Herrera, Bobby Steely.

09:13:57 2 What's the chain of command on steel gang

09:14:00 3 8501?

09:14:01 4 A On the steel gang as a whole? Or those

09:14:03 5 employees you mentioned?

09:14:04 6 Q Let's do as a whole to start.

09:14:07 7 A Okay.

09:14:08 8 So you will have a director. Let's start

09:14:10 9 there. You can go all of the way up into Omaha,

09:14:13 10 but we will start with the director level, then the

09:14:16 11 manager level, ARSA level, supervisor, foremans,

09:14:21 12 assistant foremans.

09:14:23 13 Q Got it.

09:14:24 14 All right.

09:14:25 15 In July of 2015, who was the director?

09:14:30 16 A Louis Martinez.

09:14:34 17 Q Who was the manager?

09:14:36 18 A Michael Rolow.

09:14:38 19 Q You were the ARSA supervisor?

09:14:41 20 A Yes. And there's two of us on this crew,

09:14:44 21 so it would be also Carlos Diaz -- is the other

09:14:48 22 supervisor.

09:14:49 23 Q And are you and Carlos Diaz of equal

09:14:51 24 authority?

09:14:53 25 A Yes, sir. Yes, sir.

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09:14:53 1 Q The foreman -- are the foremen in charge

09:14:57 2 of a certain portion or segment of the gang?

09:15:00 3 A Yes, I have several foremen. The name

09:15:03 4 foreman would be a steel gang foreman. And I also

09:15:06 5 have a welding gang foreman, Surfacing Gang

09:15:09 6 foreman.

09:15:14 7 Q Okay.

09:15:14 8 And who was the steel gang foreman on

09:15:17 9 July 24, 25, 26?

09:15:21 10 A Steve Gallop.

09:15:25 11 Q Surfacing Gang foreman?

09:15:27 12 A That was Robert Herrera.

09:15:29 13 Q And if I happen to call him "Bobby" -- he

09:15:33 14 is known as "Bobby Herrera" on the gang?

09:15:35 15 A Yes, correct.

09:15:36 16 Q And the welding gang foreman?

09:15:38 17 A That's been a revolving door. I don't

09:15:41 18 remember who the welding gang foreman was. I would

09:15:44 19 have to look at the record.

09:15:46 20 Q All right.

09:15:47 21 Then the assistant foreman, can you recall

09:15:48 22 any of the assistant foremen that were on the gang

09:15:52 23 at that time?

09:15:53 24 A Another revolving door. I can't remember

09:15:54 25 them all. I know there's a Mr. Nichols because he

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09:15:58 1 was involved in the area. He was on -- I don't

09:16:03 2 remember the rest of them.

09:16:05 3 Q Okay.

09:16:06 4 Is it your memory that Mr. Nichols -- is

09:16:10 5 it "Nichols" or "Nicholson"?

09:16:11 6 A "Nicholson." There you go. There you

09:16:13 7 go.

09:16:13 8 Q No problem.

09:16:14 9 Was Mr. Nicholson the assistant foreman or

09:16:17 10 have some supervisory authority over the cleanup

09:16:21 11 gang?

09:16:22 12 A Quality control, yes.

09:16:25 13 Q Quality control.

09:16:27 14 And another kind of nickname, I guess, on

09:16:29 15 the gang for that is "cleanup"?

09:16:32 16 A Yes, correct.

09:16:38 17 Q Okay.

09:16:39 18 Because you've been on this gang quite a

09:16:41 19 while and are good at explaining stuff, I need you

09:16:44 20 to explain to the jury what machines are on 8501

09:16:50 21 and what employees and what the machines do all

09:16:54 22 through the gang.

09:16:56 23 Let's start with this: How many gangs are

09:16:58 24 there in July of 2015? How many machines were

09:17:02 25 there? This is essentially a mechanized gang,

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09:17:05	1	right?	09:19:07	1	Further back is when we get into the
09:17:06	2	A Yeah. It's a big assembly line, if you	09:19:09	2	quality control area, our cleanup area.
09:17:08	3	will. It's how we appropriate.	09:19:13	3	This operation works at a pretty normal
09:17:11	4	Anywhere from -- I don't have the exact	09:19:16	4	85, 90 percent clip rate, where you are always
09:17:13	5	number of machines, but anywhere from 24, 26, 27	09:19:19	5	going to have a clip that didn't get clipped on
09:17:17	6	pieces of equipment. During this process, we were	09:19:22	6	because the tie was slewed or a biscuit popped out.
09:17:19	7	just doing -- I can't remember if we were doing a	09:19:25	7	That crew is working on a five, ten percent
09:17:22	8	rail relay or a pad, but the operation is the same.	09:19:28	8	finishing up, so everything is 100 percent behind
09:17:28	9	The first machines go out, if there's any	09:19:31	9	us.
09:17:30	10	slew ties, we have to straighten them out. So we	09:19:31	10	Q What machine is a -- what machines are
09:17:35	11	have a big curbing machine, it will curb the	09:19:35	11	assigned to the cleanup gang?
09:17:36	12	ballast away. We have other little machines that	09:19:37	12	A We have got a P-Car that's the machine
09:17:36	13	will grab a tie to make sure they are straight. We	09:19:41	13	that will be up in front that clips the clips. And
09:17:37	14	have a "mini surfacing gang," they call it, tamper,	09:19:41	14	we also have a camp car which would -- it will
09:17:37	15	regulator, ball through, squeeze the tie so	09:19:45	15	apply the clips. It's not as big of a machine as
09:17:45	16	everything is nice and tight, bring the ballast	09:19:47	16	what we call the "eight-man." It's just a
09:17:47	17	back in.	09:19:51	17	single --
09:17:48	18	Q So those first gangs are straightening any	09:19:53	18	Q What does the P-car do again?
09:17:51	19	rails that are --	09:19:55	19	A Declips.
09:17:52	20	A Any ties.	09:19:56	20	Q Declips?
09:17:53	21	Q Any ties that are out of alignment?	09:19:57	21	A Yes.
09:17:56	22	A Yes, sir, any ties.	09:19:57	22	Q And camp car reclips?
09:17:57	23	Q And them tamping the ballast, basically	09:20:00	23	A Correct.
09:18:00	24	establishing a foundation for the ties and the	09:20:00	24	Q All right.
09:18:03	25	ballast?	09:20:01	25	Now let's see if we can give the jury some
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09:18:04	1	A Correct.	09:20:04	1	idea of what we are talking about here.
09:18:04	2	Q For the new rails you all are going to put	09:20:20	2	If you could mark that for me.
09:18:08	3	in?	09:20:51	3	(Plaintiff's Exhibit 5 was marked
09:18:09	4	A Correct. New rails or pads that we are	09:20:51	4	for identification, a copy of which is
09:18:11	5	going to put on. Either way, we have got to pick	09:20:51	5	attached hereto.)
09:18:13	6	the rails up.	09:20:51	6	MR. SCHMITT: Did you want to start at 1?
09:18:14	7	After that process, we start a "declipping	09:20:54	7	MR. COX: Good point. Thank you, Dave.
09:18:17	8	process," we call it. It's removing the fasteners	09:20:57	8	Let's go off the record a second.
09:18:19	9	that are holding the rail onto the ties -- we	09:20:59	9	Where are we?
09:18:20	10	declip those off, gather up the clips, pile them up	09:21:02	10	THE VIDEOGRAPHER: We are going off the
09:18:23	11	in the piles so they are not loose material laying	09:21:03	11	record. The time is 9:18.
09:18:27	12	everywhere. Then we start in the Harsco equipment	09:21:41	12	(Recess taken.)
09:18:30	13	where they are actually picking up the old rail and	09:21:41	13	THE VIDEOGRAPHER: We are back on the
09:18:33	14	then either laying new rail into the old track at	09:21:42	14	record. The time is 9:19 a.m.
09:18:35	15	the same time so we can change out the material,	09:21:45	15	BY MR. COX:
09:18:37	16	the "OTM," we call it, the pads and biscuits.	09:21:45	16	Q Mr. Linford, let me hand you what I have
09:18:41	17	After that, we will have a machine that we	09:21:47	17	marked as Exhibit 5.
09:18:44	18	named the "trash machine." That's to pick up,	09:21:50	18	Can you tell me what that is?
09:18:46	19	gathering up all of the old pads coming out from	09:21:51	19	A That would be a P-car.
09:18:50	20	underneath from the rail on the ties.	09:21:53	20	Q And it's identified on the -- at the top
09:18:52	21	After that, we start in the clipping	09:21:56	21	of the cab there with "P-car" and the number.
09:18:54	22	process. You will have a big Harsco machine,	09:22:00	22	A Correct, 1401.
09:18:58	23	that's actually putting the rail back into a	09:22:00	23	Q Is that a UP P-car?
09:19:01	24	neutral temperature state and applying insulators	09:22:03	24	A Yes.
09:19:04	25	and clips and clipping the rail back up.	09:22:03	25	Q Union Pacific?

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09:22:04	1	A Yes.	09:24:12	1	A It can do both.
09:22:04	2	Q Now, if I can get you to hold that up and	09:24:14	2	Q All right.
09:22:07	3	the court reporter to focus on it a little bit and	09:24:14	3	But when it's functioning on the cleanup
09:22:10	4	tilt it back so we have got a little light on it.	09:24:16	4	crew, it is declipping?
09:22:13	5	By pointing to it, can you describe what on this	09:24:18	5	A The primary purpose of the machines is
09:22:16	6	machine does what?	09:24:20	6	declipping.
09:22:20	7	A I don't know if you can see it. Here is	09:24:21	7	Q All right.
09:22:22	8	the heads that come down (indicating) and remove	09:24:22	8	So behind this machine in the gang will be
09:22:25	9	the clips, which would be these clips over here	09:24:25	9	another machine that you called the eight-man that
09:22:28	10	(indicating) on this side (indicating). So the	09:24:28	10	will reclip the clips --
09:22:31	11	jaws will come down, grab a clip and pull it off.	09:24:33	11	A Yeah, the eight-man would be in the
09:22:36	12	Q We see a cab where the operator sits. And	09:24:36	12	natural production process. There's also a machine
09:22:40	13	that's right here (indicating).	09:24:40	13	called the "camp car" that would be behind this
09:22:42	14	Is that cab air conditioned? Do you know?	09:24:44	14	machine in the quality control area, and it
09:22:44	15	A It is.	09:24:46	15	applies.
09:22:45	16	Q Let me show you Exhibit 6.	09:24:47	16	Q Okay. I see.
09:23:03	17	(Plaintiff's Exhibit 6 was marked	09:24:49	17	And then what else applies -- after the
09:23:03	18	for identification, a copy of which is	09:24:51	18	quality control or cleanup crew goes through, is
09:23:03	19	attached hereto.)	09:24:54	19	there another part of the gang behind there?
09:23:03	20	BY MR. COX:	09:24:55	20	A That would be the servicing gang.
09:23:04	21	Q Now, I understand that this gang was	09:24:56	21	Q What is the servicing gang?
09:23:05	22	working on concrete ties at the time.	09:24:58	22	A The servicing gang is the big tamper
09:23:08	23	A Correct.	09:25:01	23	that's squeezing the ties, putting the curvature
09:23:09	24	Q Exhibit 6 -- Exhibit 6, let's start here	09:25:01	24	correctly back in the track, raising the track, and
09:23:12	25	(indicating). This is the ballast?	09:25:03	25	then a regulator to bring in the ballast.
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09:23:14	1	A Correct.	09:25:06	1	Q All right.
09:23:14	2	Q Those are rocks that are used to support	09:25:07	2	I have heard that called, "surfacing" or
09:23:16	3	the ties and rail so that the track will have	09:25:10	3	"smoothing gang"?
09:23:21	4	stability. And there are loose rocks so the track	09:25:10	4	A I have never heard "smoothing." I heard
09:23:25	5	will drain.	09:25:14	5	"surfacing."
09:23:27	6	A Correct.	09:25:16	6	Q All right.
09:23:28	7	Q These are the concrete ties that I'm	09:25:17	7	Basically, this is the last crew that will
09:23:30	8	pointing to?	09:25:19	8	go through to finish off the track?
09:23:31	9	A Yes, they are.	09:25:21	9	A Correct.
09:23:31	10	Q That's the rail?	09:25:21	10	Q And as I understand it, the machines in
09:23:33	11	A Yes, it is.	09:25:23	11	this gang must work in that order? The order that
09:23:34	12	Q And what are these things right here?	09:25:27	12	we have discussed?
09:23:36	13	A These are the clips.	09:25:28	13	A Yes, yes.
09:23:37	14	Q And in the old days, with wooden ties, you	09:25:29	14	Q Okay.
09:23:41	15	would use spikes to hold the rail in place.	09:25:32	15	Give me a second here.
09:23:45	16	Nowadays with concrete ties, you use these	09:25:40	16	Let's talk about the Harsco machine that
09:23:47	17	clips that are attached to the concrete tie to hold	09:25:45	17	clips the -- clips back on to the rail.
09:23:51	18	the rail in place on the concrete tie?	09:25:53	18	Insulators and clips, you said it has an
09:23:54	19	A Correct.	09:25:55	19	85 to 90 percent clip-on accuracy rate, I guess.
09:23:55	20	Q And it is these clips that are removed or	09:26:00	20	A On an average day, yep -- "yes."
09:24:00	21	installed with the various machines on the gang.	09:26:02	21	Q What do you mean by that?
09:24:03	22	And this P-car 1401 in Exhibit 5, can that machine	09:26:03	22	A It means -- so if you want every tie to
09:24:08	23	clip and declip?	09:26:06	23	have an insulator and clip applied correctly, it
09:24:10	24	A Yes, it can.	09:26:10	24	would be 100 percent. So throughout your day, if
09:24:11	25	Q It can do both?	09:26:12	25	you walk a quarter mile and you have 10 off or so,

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09:26:16	1	there's 80 percent or 90 percent -- just a rough	09:28:15	1	A Correct.
09:26:20	2	guess how much it's doing on 100 percent coming out	09:28:16	2	Q There will be times when there's a section
09:26:23	3	of the machine.	09:28:17	3	of track you all don't have to do anything to, you
09:26:24	4	Q And what determines the percentage of	09:28:20	4	just ride over that and move to another section and
09:26:27	5	accuracy of the percentage of completion or	09:28:23	5	then when the back part of the gang catches up to
09:26:31	6	accuracy with which the clips are put on?	09:28:27	6	the part of the track you don't have to work on,
09:26:35	7	For example, is it the condition of the	09:28:29	7	they will drive to catch up?
09:26:37	8	ties? Orientation of the ties? Skill of the	09:28:32	8	A That's correct.
09:26:41	9	people working on the gang on that crew? What	09:28:32	9	Q And all of these machines are track
09:26:44	10	determines the accuracy?	09:28:35	10	mounted?
09:26:46	11	A Pretty much all of the above. So there's	09:28:36	11	A Yes.
09:26:47	12	two independent satellite machines, an eight	09:28:47	12	Q Okay.
09:26:51	13	machine, eight operators -- that's where we get the	09:28:50	13	Now, were you there on -- at the gang on
09:26:52	14	term, "eight-man."	09:28:53	14	July 26th?
09:26:55	15	First guys in the first seats apply the	09:28:55	15	A Yes, I was.
09:26:58	16	biscuit. Machine has got to operate and manipulate	09:28:56	16	Q Did you have anything to do with
09:27:01	17	the rail to apply the biscuit. If the operators	09:29:00	17	Mr. Herrera and his injury, an investigation into
09:27:03	18	fail to get it in there, it could cause an issue	09:29:06	18	why he got hurt?
09:27:06	19	that it doesn't get it applied.	09:29:08	19	Did you have anything to do with
09:27:08	20	If the machine can't move the rail because	09:29:09	20	Mr. Herrera's injury?
09:27:09	21	the ties are slewed, the biscuit doesn't get	09:29:11	21	A No, I did not.
09:27:11	22	applied, which can create problems in the quality	09:29:12	22	Q All right.
09:27:13	23	control. And then same process for the clips. The	09:29:15	23	In that case, I'm going to use you to
09:27:16	24	clips -- the rail doesn't move, because the guy	09:29:17	24	continue our education process.
09:27:18	25	doesn't put the clips in right, and then after that	09:29:30	25	Now, how does the gang and the supervisors
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09:27:22	1	machine goes through, there's clips that squeeze	09:29:33	1	of this steel gang 8501 -- how does the UP keep
09:27:25	2	the clips on. So anywhere from all of the above,	09:29:38	2	track of what work is done by that gang?
09:27:27	3	basically.	09:29:44	3	In other words, are you required to
09:27:27	4	Q So this is a big machine?	09:29:46	4	daily -- you or someone on the gang required daily
09:27:29	5	A Yes.	09:29:50	5	to report to -- I'm guessing Mr. Martinez or
09:27:29	6	Q And it's got eight operators. And does it	09:29:55	6	someone above him, what work the gang has
09:27:32	7	have people on the ground, laborers on the ground	09:29:59	7	accomplished that day?
09:27:35	8	positioning clips and pads, insulators?	09:30:00	8	A We went out a daily report on our
09:27:38	9	A No, no.	09:30:03	9	production report.
09:27:39	10	Q Okay.	09:30:03	10	Q Let me hand you a couple of things and see
09:27:39	11	That's all done by the operators on the	09:30:06	11	if you can tell me which of these would document
09:27:40	12	machine?	09:30:09	12	for us -- first take a look at that (indicating).
09:27:41	13	A Uh-huh.	09:30:20	13	That (indicating).
09:27:41	14	Q All right.	09:30:31	14	Are any of those documents that we do use
09:27:44	15	This gang -- this complete gang, once it	09:30:34	15	to discuss what production occurred on that gang?
09:27:49	16	started working or when it resumes work that	09:30:41	16	A Yeah, let me familiarize myself. I don't
09:27:52	17	morning, it can be spread out over what distance?	09:30:43	17	put the reports in.
09:27:56	18	A Depending on if we have any skips in our	09:30:45	18	Q Take your time.
09:27:59	19	work process or not. It's -- if we are just out of	09:30:46	19	A Let me look at them and make sure they
09:28:05	20	face and everything is just right there in front of	09:30:48	20	are -- yeah, you could dissect what we did
09:28:07	21	us, we can be stretched out to three quarters of a	09:31:03	21	production-wise on these days through that one.
09:28:10	22	mile -- half a mile.	09:31:06	22	Q Show me what you have got there.
09:28:12	23	Q Okay.	09:31:08	23	Does this one (indicating) help, also?
09:28:13	24	And that's if the gang is all working	09:31:17	24	A Yeah, it looks like it's pretty much the
09:28:15	25	together?	09:31:19	25	same thing.

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09:31:20	1	Q All right. So let's see. If you can mark	09:33:48	1	from 38 to 37 on July 24th to July 25th?
09:31:22	2	that whatever is next.	09:33:53	2	A No, that would be -- it's a big gang, so
09:31:34	3	And if you could, Mr. Linford, identify	09:33:55	3	anybody from not showing up to work, vacation or
09:31:36	4	for us what Exhibit 7 is.	09:33:58	4	anything like that.
09:31:47	5	A Well, it says on the highlighted portion	09:33:59	5	Q Okay.
09:31:49	6	we have got up here on top, "Detailed gang	09:34:00	6	Then the permit hours, what does that tell
09:31:52	7	production report."	09:34:02	7	us?
09:31:53	8	(Plaintiff's Exhibit 7 was marked	09:34:05	8	A That's how many hours on track. That's
09:31:53	9	for identification, a copy of which is	09:34:08	9	how many hours we were working on track.
09:31:53	10	attached hereto.)	09:34:10	10	Q All right.
09:31:53	11	BY MR. COX:	09:34:11	11	And track, what does "SIMN" mean?
09:31:53	12	Q Sorry. I need to highlight it -- guide	09:34:14	12	A "Single main."
09:31:57	13	me.	09:34:16	13	Q And milepost -- "MP" -- "From MP to"?
09:31:59	14	Detailed gang production report. And we	09:34:20	14	That's "milepost"?
09:32:00	15	see in the report date -- these are reports for	09:34:21	15	A Correct.
09:32:03	16	July 24, July 25, July 26, July 27, July 28, 29, 30	09:34:22	16	Q How does the UP measure its mileposts in
09:32:13	17	of 2015?	09:34:25	17	the Kansas Sub, from what city and in what
09:32:14	18	A Correct.	09:34:30	18	direction?
09:32:15	19	Q What does the work code on Exhibit 7	09:34:30	19	A I do not know.
09:32:19	20	mean?	09:34:32	20	Q "Gang production LF"?
09:32:23	21	A Best way to explain -- 1005 is kind of	09:34:35	21	A "Linear feet."
09:32:28	22	a -- you know, I don't have the exact answer for	09:34:36	22	Q So now this is what was actually
09:32:30	23	you on that one. It's more of a timekeeping --	09:34:38	23	accomplished on each of these days, this is how
09:32:34	24	Q I understand.	09:34:43	24	many linear feet of new rail that was laid on each
09:32:36	25	A -- where the time goes on the 1205. But I	09:34:49	25	of these days?
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09:32:39	1	don't have the exact answer.	09:34:50	1	A Correct.
09:32:40	2	Q Fair enough.	09:34:51	2	Q Now, if we look down at the track miles,
09:32:41	3	Then we can see on there a work order	09:34:54	3	linear feet converts to how many track miles, but
09:32:44	4	project number, budget reference number. That's	09:34:57	4	the reason 6120 is not more than a mile is because
09:32:48	5	probably a little above your pay grade, where the	09:35:01	5	you all are laying rail on the left side and right
09:32:51	6	money is coming from for the job?	09:35:06	6	side of the track, both pieces of rail are being
09:32:53	7	A Sure, sure.	09:35:10	7	replaced?
09:32:54	8	Q Project type: New rail; subdivision:	09:35:10	8	A That's correct.
09:32:58	9	Kansas subdivision; Service unit, Kansas City;	09:35:10	9	Q All right.
09:33:04	10	Supervisor name: Linford, J.R."	09:35:11	10	And then "weld count," what does that tell
09:33:07	11	That's you?	09:35:14	11	us?
09:33:08	12	A Yes.	09:35:14	12	A How many welds were made that day.
09:33:08	13	Q All right.	09:35:17	13	Q Why would you make a weld as you were
09:33:09	14	This tells us how many men were working on	09:35:20	14	laying this new rail?
09:33:11	15	8501 on these various days?	09:35:21	15	A When we are laying new rail, we have to
09:33:14	16	A Correct.	09:35:24	16	lay everything out continuous in the front of the
09:33:15	17	Q Do you have any knowledge of a foreman or	09:35:27	17	machine that applies it. And then you have got the
09:33:19	18	an assistant foreman having a heat injury illness	09:35:30	18	switches, everything that you would cut out, you
09:33:23	19	on the 24th, Charles Turner?	09:35:33	19	have got to go.
09:33:36	20	A On the 24th?	09:35:34	20	Q So the jury will understand, again, in the
09:33:38	21	Q Or 25th.	09:35:36	21	old days, the clickety clack of a railroad train
09:33:39	22	A No, he didn't have a heat illness or	09:35:40	22	was when the wheels would go over a joint in a
09:33:42	23	injury that I'm aware of on the 24th.	09:35:44	23	rail; is that right?
09:33:45	24	Q Okay.	09:35:44	24	A That's right.
09:33:46	25	Do you know why the drop in number of men	09:35:46	25	Q And in those days, the distance between

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09:35:48	1	the joints or an average rail was how long?	09:37:43	1	A That's what the number says.
09:35:51	2	A I do not know.	09:37:44	2	Q July 27, you are on the track 10 and a
09:35:53	3	Q Okay.	09:37:47	3	half hours and you lay 6,840 feet of rail?
09:35:54	4	Nowadays, it's continuous welding?	09:37:51	4	A Again, that's what it says.
09:35:56	5	A Yes.	09:37:53	5	Q I don't expect you to have a memory --
09:35:56	6	Q No joints, no clickety clack?	09:37:55	6	A Just going off what it says here.
09:35:59	7	A For the most part. You are still going to	09:37:58	7	Q Absolutely. That's why I'm trying to
09:36:03	8	have some joints on the railroad. We try to make	09:38:01	8	clarify weights. Okay.
09:36:05	9	it continuous welded rail, but there's still joints	09:38:20	9	MR. COX: If you would mark that for me,
09:36:11	10	out there.	09:38:22	10	please.
09:36:11	11	Q Okay.	09:38:25	11	(Plaintiff's Exhibit 8 was marked
09:36:13	12	Like a temporary place in a weld or in a	09:38:25	12	for identification, a copy of which is
09:36:13	13	rail or something?	09:38:25	13	attached hereto.)
09:36:13	14	A Yes.	09:39:00	14	BY MR. COX:
09:36:14	15	Q Now, "rail weight 141," what does that	09:39:00	15	Q Let me hand you what has been marked as
09:36:17	16	mean?	09:39:03	16	Exhibit 8. And this is another "Production
09:36:19	17	A That's the class of railroad we are	09:39:11	17	Reporting Details Production Milestone."
09:36:21	18	putting in. The "size" of the rail we are putting	09:39:16	18	What does "production milestone" mean, if
09:36:24	19	in is a better way to put it, I guess.	09:39:20	19	you know?
09:36:26	20	Q Does that mean that every three feet of	09:39:20	20	A I'm not familiar with that, either.
09:36:28	21	rail weighs 141 pounds?	09:39:22	21	Q All right.
09:36:31	22	A I think so, I think so.	09:39:23	22	See, this is reported by Matthew Hughes?
09:36:32	23	Q What is the "A" with a little thing on top	09:39:26	23	A Correct. He is my timekeeper.
09:36:35	24	of it? What does that mean under "rail weight"?	09:39:27	24	Q I got it. Okay.
09:36:40	25	A I don't know. I'm not familiar with	09:39:29	25	It falls to him to do all of the
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09:36:41	1	that.	09:39:31	1	paperwork, basically?
09:36:42	2	Q Okay.	09:39:32	2	A Correct.
09:36:42	3	All right. So if we look at Exhibit 7, I	09:39:33	3	Q But if we look at 8, it tells us a little
09:36:45	4	understand that July 24th was a travel day. The	09:39:36	4	bit more about what happened on July 26th, 2015.
09:36:48	5	machines show up.	09:39:40	5	There at the bottom, it says, "Report date."
09:36:49	6	They are hauled on flatcars?	09:39:42	6	A Okay. Circled.
09:36:51	7	A Yes.	09:39:43	7	Q "Gang 8501," date and time entered -- it's
09:36:51	8	Q Loaded up on flatcars?	09:39:47	8	Matthews entered this information the next morning,
09:36:53	9	A Pulled by a train.	09:39:51	9	it looks like.
09:36:54	10	Q Pulled by a train. And when they get to a	09:39:52	10	Is that his practice?
09:36:57	11	location, they are unloaded. And these flatcars	09:39:54	11	A After his shift or the morning.
09:37:00	12	actually have rails on them so that the machines	09:39:57	12	Q Got it.
09:37:03	13	can be driven up onto the flatcars?	09:39:58	13	So this production milestone exhibit talks
09:37:06	14	A That is correct.	09:40:00	14	about precurfew activities. Those are things that
09:37:06	15	Q So July 24 is a moving day. And you all	09:40:04	15	are done, I gather, before the gang gets on the
09:37:08	16	had moved -- where had you been last before --	09:40:10	16	track?
09:37:12	17	A We had been on the canyon subject in	09:40:10	17	A That is correct.
09:37:13	18	California -- Northern California.	09:40:11	18	Q "Job briefing, arrive at machines,
09:37:14	19	Q And then July 25th looks like the first	09:40:14	19	equipment check, comp, permit okay. Then ramp-up
09:37:17	20	day that the gang works. And on that day, you work	09:40:20	20	activities, first spike is pulled" -- your target
09:37:22	21	11 -- you are on the track 11 hours. And you lay	09:40:23	21	was to pull it at 7:00, but the first spike was
09:37:25	22	6,120 feet of rail?	09:40:27	22	pulled at 7:40 on the morning of July 26th?
09:37:29	23	A Yes. That's what it says.	09:40:31	23	A Yeah. And what this is is kind of a CPI
09:37:32	24	Q And then July 26th, you are on the track	09:40:34	24	document. And it's -- we don't have a program
09:37:36	25	12 hours and you lay 6,679 feet of rail?	09:40:37	25	built for us, so we are not pulling actual spikes

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09:40:41	1	that we would take that term as pulling a clip.	09:43:05	1	Q All right.
09:40:44	2	Okay?	09:43:08	2	So the gang showed up at 6:00, job
09:40:45	3	Q I got it.	09:43:14	3	briefing at 6:50, arrive at machines at 7:00, first
09:40:46	4	In other words, this is the first work	09:43:19	4	clip pulled 10:08. And then it looks like the gang
09:40:48	5	that's done?	09:43:26	5	worked from 10:00 until 6:00, which would have been
09:40:49	6	A Correct.	09:43:31	6	eight hours?
09:40:49	7	Q So since we are on concrete ties, even	09:43:32	7	A That's what it shows.
09:40:52	8	though it says, "First spike pulled," it would be	09:43:34	8	Q Oh, here. The next page may explain why
09:40:55	9	first clip?	09:43:39	9	some of the delays.
09:40:56	10	A Correct.	09:43:51	10	All right.
09:40:57	11	Q And that occurs 7:40 in the morning. And	09:43:51	11	Do you see here where it says, "Morning
09:41:01	12	then, "Production, last spike driven" -- that would	09:43:53	12	report DPR comments"?
09:41:04	13	have been last clip installed -- it looks like it	09:43:55	13	A I do.
09:41:07	14	was 4:30? "1630"?	09:43:56	14	Q Do you know what that means?
09:41:11	15	A Correct. It says "1630."	09:43:56	15	A That's just a comment box. I don't know
09:41:13	16	Q And then "ramp-down activities"? What are	09:43:58	16	what the "DPR" stands for. But just a comment box
09:41:16	17	"ramp-down activities"?	09:44:02	17	for the timekeeper to put some comments in
09:41:17	18	A That would be if you needed to travel to a	09:44:05	18	throughout the day.
09:41:20	19	siding to clear up the track.	09:44:05	19	Q All right.
09:41:21	20	Q So it looks like the gang has cleared the	09:44:06	20	Then we see above that, we see "quality
09:41:24	21	track at seven o'clock?	09:44:09	21	audit," what does that mean? Quality audit in?
09:41:25	22	A Okay. That's what it says. 1900.	09:44:14	22	A Not sure. Not familiar with that.
09:41:28	23	Q Okay.	09:44:16	23	Q Then it says, "temp of rail," that's the
09:41:57	24	(Plaintiff's Exhibit 9 was marked	09:44:18	24	temperature of the rail and degrees Fahrenheit?
09:41:57	25	for identification, a copy of which is	09:44:22	25	A Correct.
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09:41:57	1	attached hereto.)	09:44:23	1	Q "106"? 106 degrees?
09:41:58	2	BY MR. COX:	09:44:25	2	A Yes.
09:41:58	3	Q I'm going to back up on you today and let	09:44:25	3	Q And ambient temperature was 93 degrees?
09:42:01	4	me hand you what we have marked as Exhibit 9. It's	09:44:29	4	A Yes.
09:42:09	5	the same form as we have just talked about on 8.	09:44:29	5	Q And here we are talking about July 25th.
09:42:12	6	Except this is what occurred on July 25th.	09:44:34	6	Can you decipher for us any of the notes
09:42:15	7	A Okay.	09:44:35	7	in the morning report DPR comments?
09:42:15	8	Q Do you see at the bottom?	09:44:39	8	A "T and T" would be -- I'm assuming "track
09:42:16	9	A It does say, "July 25th."	09:44:43	9	and time" -- that doesn't make any sense because it
09:42:19	10	Q All right.	09:44:45	10	says ".50 hours." Let me read it just a second.
09:42:20	11	On July 25th, start of shift at 6:00 a.m.	09:44:52	11	Q Study it. I don't want you to guess.
09:42:23	12	same precurfew activities that we talked about.	09:44:54	12	Just if you know. You are not required to know
09:42:29	13	You had planned on pulling the -- pulling the first	09:44:57	13	everything.
09:42:35	14	clip at 7:30, but it happened at 10:00 a.m.	09:45:16	14	A So the "T and T," a lot of times stands
09:42:41	15	A That's what it says.	09:45:19	15	for "track and travel." I'm assuming on this one,
09:42:42	16	Q You wouldn't have any memory why the	09:45:22	16	if you follow it down, it says "TT miles," I assume
09:42:44	17	delay, would you?	09:45:26	17	that's the track travel. That's the distance we
09:42:45	18	A I would not. I would not.	09:45:28	18	probably had to travel to the closest siding.
09:42:46	19	Q Fair enough.	09:45:31	19	Q Got it.
09:42:47	20	And then it looks like the last clip -- it	09:45:33	20	A Closest tie up would be a "Y" for "Yes."
09:42:50	21	says, "Last spike," but we understand it is the	09:45:33	21	We relayed 12,240 feet that day.
09:42:54	22	clip -- was pulled at 1800 -- six o'clock at night?	09:45:37	22	"Delays" -- things that would delay us, it
09:42:58	23	A Or applied at 1800.	09:45:40	23	looks like 30 minutes on mid year 101s. 2.5 hours
09:43:00	24	Q Correct. Yeah, I'm sorry.	09:45:44	24	on prep gang due to rail placement." And then it's
09:43:02	25	A That's okay. It does say, "1800."	09:45:49	25	got two IJ's -- insulated joints, 26, in tracks

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09:45:53 1 wells -- is how I read that.
 09:45:55 2 Q Okay.
 09:46:05 3 This one I'm not clear on.
 09:46:11 4 Okay. Let's go back to 7. Let me see if
 09:46:14 5 I can clear something up.
 09:46:20 6 7/25, it's got "6120." Is that 6120 and
 09:46:25 7 6120?
 09:46:26 8 A It's left and right rail because you are
 09:46:29 9 laying both left and right at the same time.
 09:46:31 10 Q I got it.
 09:46:32 11 So that day, the gang essentially moves
 09:46:37 12 6,120 feet, but because it laid rail on both rail,
 09:46:42 13 it laid -- on July 25th, for example -- let me do
 09:46:52 14 some quick math here -- 12,240?
 09:46:56 15 A Yeah, add the two together. If you go
 09:46:59 16 further, you can see "left rail." "L and L," is
 09:47:02 17 left rail and right rail.
 09:47:07 18 Q I got you.
 09:47:07 19 That's why on Exhibit 9 when it says,
 09:47:09 20 "Relay 12,240 feet" --
 09:47:13 21 A Correct.
 09:47:14 22 Q All right.
 09:47:16 23 Thanks for helping me with that. All
 09:47:18 24 right.
 09:47:20 25 Now, I'm going to ask you to go back to

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09:48:36 1 A Pretty self-explanatory. Holland would be
 09:48:39 2 welding truck, so he has got his head down trying
 09:48:39 3 to make a weld, but he can't make a weld, which
 09:48:39 4 causes the assembly line to come to complete stop.
 09:48:44 5 Q Because of the hydraulic coast brakes?
 09:48:48 6 A Yes.
 09:48:48 7 Q All right.
 09:48:49 8 Then 30 minutes on distribution of
 09:48:51 9 T-rails -- what are "T-rails"?
 09:48:53 10 A "T-rails" is an abbreviation for
 09:48:55 11 "transition rails," which need to be welded into
 09:48:57 12 the track. Any time you get your 141 rail down to
 09:49:02 13 maybe a 133 rail, the transition rails -- it's
 09:49:04 14 self-explanatory -- transition that part.
 09:49:08 15 Q Then 45-minute heat break, what does that
 09:49:11 16 mean?
 09:49:12 17 A That would be mandatory heat breaks
 09:49:16 18 throughout the day following our heat charts.
 09:49:18 19 Q All right.
 09:49:19 20 So there were 45 minutes of mandatory heat
 09:49:23 21 breaks in this on July 26th on the gang that worked
 09:49:29 22 from 7:40 in the morning until 4:30 in the morning
 09:49:38 23 or 4:30 in the afternoon?
 09:49:41 24 Go back to the cover page.
 09:49:45 25 First clip is pulled at 7:40. Last clip

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09:47:23 1 July 26th -- that's Exhibit 8.
 09:47:29 2 A Okay.
 09:47:30 3 This one (indicating)?
 09:47:30 4 Q Yes, sir. Flip one more page.
 09:47:33 5 I'm led to believe by the UP -- and
 09:47:36 6 correct me if I'm wrong -- because these are
 09:47:37 7 Batesed consecutively -- do you see the Bates
 09:47:41 8 number at the bottom? -- that these are related
 09:47:43 9 documents.
 09:47:45 10 So the first page -- they are numbered 1,
 09:47:48 11 2, 3 -- so if we look at the second page of
 09:47:57 12 Exhibit 8 for July 26th, 2015, up here in the
 09:48:01 13 morning report, BPR comments, you re-layed 13,358
 09:48:08 14 feet of rail. The delays -- when he -- when
 09:48:12 15 Mr. Hughes uses "delays," what's he talking about
 09:48:15 16 there?
 09:48:16 17 A "Delays" is anything that happens
 09:48:17 18 throughout the assembly process that would inhibit
 09:48:21 19 production.
 09:48:21 20 Q So we have 2.5 hours on the Harsco
 09:48:24 21 eight-man losing hydraulic power to satellite?
 09:48:30 22 What does that mean?
 09:48:31 23 A Your eight-man broke down.
 09:48:32 24 Q "45 minutes on Holland blowing a hydraulic
 09:48:35 25 truck," what does that mean?

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09:49:48 1 installed says, "Driven" -- but we have cleared
 09:49:51 2 that up. 4:30.
 09:49:53 3 So the gang works from 7:40 -- I guess
 09:49:59 4 until they clear the track at 7:00. And 45 minutes
 09:50:03 5 of minimum heat breaks?
 09:50:05 6 A Okay. That sounds like how it is reading,
 09:50:09 7 how it's showing.
 09:50:10 8 Q Okay.
 09:50:16 9 Thank you for that. Now don't panic,
 09:50:19 10 Ms. Court Reporter. I will straighten all of these
 09:50:22 11 out for you.
 09:50:24 12 All right.
 09:50:25 13 Let's look at what has previously been
 09:50:30 14 marked as Exhibit 4. This is a job briefing, 8501
 09:50:36 15 work group.
 09:50:37 16 Can you explain to us what this document
 09:50:38 17 is?
 09:50:41 18 A It's a daily sheet that we hand out to our
 09:50:44 19 employees for their job briefing as they -- we also
 09:50:48 20 got a verbal. But then they have a physical copy
 09:50:51 21 of kind of what's going on for the day.
 09:50:53 22 Q If we look on the second page -- not going
 09:50:56 23 to spend a lot of time there, but that basically
 09:50:59 24 confirms in the worker's mind their track
 09:51:02 25 protection?

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09:51:03	1	A That is their track and time.	09:53:01	1	A How about that?
09:51:05	2	Q When we talk about "track and time" and	09:53:02	2	Q Okay.
09:51:08	3	"track protection," what we talked about earlier,	09:53:10	3	Now, is he -- there's a line that
09:51:12	4	it's to keep trains off the track while you all are	09:53:18	4	says -- sorry it's such a poor copy on this -- but
09:51:15	5	working?	09:53:24	5	it's about ten lines down, and it says, "Hospital
09:51:15	6	A That's correct.	09:53:27	6	from job site to" something "Onaga Community
09:51:16	7	Q Okay.	09:53:30	7	Hospital," and its address.
09:51:17	8	Then at the bottom, it gives us the	09:53:32	8	Why is that on there?
09:51:19	9	supervisors, Mr. Linford, Mr. Diaz, Dave Birt, was	09:53:33	9	A It's part of our emergency response
09:51:22	10	the mechanical --	09:53:35	10	protocol to know where the nearest hospital is.
09:51:24	11	A He is the mechanical supervisor.	09:53:38	11	Q And what is the emergency response
09:51:27	12	Q Carrie Stephens, Troy Passey,	09:53:41	12	protocol, ERP on that steel gang like this?
09:51:28	13	Steve Gallop -- you mentioned -- Bobby Herrera,	09:53:46	13	A Emergency response is so all of our
09:51:32	14	Matt Hughes. Okay. Bobby Steely, Red Block Peer	09:53:46	14	employees have some information in case something
09:51:36	15	Support. Okay.	09:53:47	15	happens, where to go and what are the locations
09:51:37	16	Let's go back to the front page of this.	09:53:49	16	for -- for example, ADD, where it's located in the
09:51:40	17	Now, this form, I understand, is printed	09:53:52	17	the gang, your trauma kits, where they are at.
09:51:41	18	out, but each day some additions are made to it.	09:53:56	18	It's just a visual so if something happened,
09:51:47	19	How is this form generated for each individual day?	09:53:59	19	everybody could look at it and know where the
09:51:50	20	A Once again, this is the timekeeper's	09:54:00	20	closest accident places are.
09:51:52	21	duties, so I don't know what he has got as a base	09:54:02	21	Q And this form actually identifies the
09:51:55	22	and what he actually types in, but it does change	09:54:04	22	hospital and gives directions to it?
09:51:59	23	from day to day -- certain things on it.	09:54:06	23	A It does.
09:52:01	24	Q Okay.	09:54:08	24	Q And its phone number?
09:52:02	25	And this is dated, we see in the top,	09:54:10	25	A That's what's on the paper, yeah.
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09:52:04	1	July 26th, 2015.	09:54:22	1	Q All right.
09:52:08	2	Now, is this a form that will be reviewed	09:54:24	2	And then see I'm down here on "Team Track
09:52:10	3	with the gang members at the job briefing?	09:54:28	3	Work Description."
09:52:13	4	A Yes.	09:54:31	4	The work description, "Relay milepost
09:52:16	5	Q "Heat Index Forecast, UP site, 102."	09:54:34	5	92.22 to milepost 92.90" on one main. And then on
09:52:23	6	Is that right?	09:54:41	6	the other side of the two-rail track, "Relay
09:52:23	7	A That's what it says.	09:54:47	7	milepost 99.42 to milepost 100."
09:52:25	8	Q Now, to whom -- who has -- strike that.	09:54:52	8	Does that mean that the -- one side of the
09:52:28	9	Who has the responsibility on the gang for	09:54:54	9	track has had more or less done on it the previous
09:52:30	10	determining the heat index forecast for the day?	09:54:56	10	day than another?
09:52:34	11	A The timekeeper is the one who gets on the	09:54:58	11	A No, that's just your milepost relay. You
09:52:36	12	UP site and types that in.	09:55:02	12	see you are working two separate locations. You
09:52:39	13	Q Okay.	09:55:05	13	are working from 92.22 to 92.90 -- and then you
09:52:40	14	Is there anybody on site on the gang that	09:55:08	14	skip -- you skip up to milepost 99 and start work
09:52:42	15	updates it during the day?	09:55:12	15	again.
09:52:44	16	A Gang foreman would be monitoring that	09:55:13	16	Q All right.
09:52:46	17	throughout the day.	09:55:14	17	Do you know when during the day on
09:52:46	18	Q And who is that?	09:55:15	18	July 26th that gap occurred?
09:52:48	19	A Steve Gallop.	09:55:17	19	In other words, when was some of the gang
09:52:49	20	Q All right.	09:55:20	20	working 92.22 to 92.90 and some of the gang working
09:52:50	21	Does Bobby Steely have a role in that as	09:55:27	21	99.42 to 100?
09:52:53	22	safety captain?	09:55:28	22	A I can't recall. We are spread out through
09:52:54	23	A Not necessarily a role, but he is very	09:55:32	23	the day and I can't recall exactly what time each
09:52:56	24	aware of the situation and can help out in any way.	09:55:34	24	group was where.
09:52:59	25	Q Got it.	09:55:35	25	Q All right.

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09:55:36	1	Today's goal for first column was to lay	09:58:12	1	Now, the attachment to that text is a
09:55:39	2	7,180 feet of rail and 6,124 feet of rail, so the	09:58:16	2	photograph. And if I can just have a minute. I
09:55:44	3	goal for July 26th was 13,304?	09:58:22	3	think I have a copy of that.
09:55:48	4	A That's what it shows.	09:58:39	4	MR. COX: Forgive me. I may have to go
09:55:49	5	Q And yesterday's actual -- in other words,	09:58:41	5	off the record for a minute.
09:55:52	6	for July 25th, 2015 the actual laid was 12,240	09:58:43	6	Dave, is it okay if I go off the record a
09:55:57	7	feet?	09:58:46	7	minute?
09:55:57	8	A Again, that's what it shows.	09:58:46	8	THE VIDEOGRAPHER: We are going off the
09:56:33	9	MR. COX: Let me ask you to mark that one,	09:58:48	9	record. The time is 9:56 a.m.
09:56:34	10	please.	10:07:49	10	(Recess)
09:56:36	11	(Record read.)	10:07:50	11	THE VIDEOGRAPHER: We are back on the
09:56:48	12	(Plaintiff's Exhibit 10 was marked	10:07:50	12	record.
09:56:48	13	for identification, a copy of which is	10:07:55	13	BY MR. COX:
09:56:48	14	attached hereto.)	10:07:55	14	Q We are back, Mr. Linford.
09:56:48	15	BY MR. COX:	10:07:57	15	I know somewhere I have a bigger picture
09:56:48	16	Q Mr. Linford, I have handed you what has	10:08:00	16	of that little attachment, but I couldn't find it.
09:56:50	17	been marked as Exhibit 10. And I doubt if you have	10:08:03	17	It will show up.
09:56:55	18	seen this before. Let me just tell you what it is	10:08:05	18	But we were back to the texts that the UP
09:56:57	19	so we can talk about it intelligently.	10:08:07	19	had provided me. And take a minute and look at
09:57:01	20	I asked Union Pacific Railroad to provide	10:08:11	20	this because it -- assuming I'm reading this right,
09:57:02	21	to me copies of texts -- text messages between the	10:08:16	21	July 25th, 2015, 4:34 in the afternoon, did you
09:57:08	22	supervisors on gang 8501 relating in any fashion to	10:08:22	22	send somebody a photo of this tent with the -- can
09:57:13	23	Mr. Herrera's injury.	10:08:28	23	you tell what that is? Take a close look at it.
09:57:15	24	A Okay.	10:08:31	24	A It looks like one of our cooling stations.
09:57:15	25	Q Do you have a memory of providing your	10:08:34	25	Q All right.
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09:57:18	1	text messages to a representative of risk	10:08:34	1	Did you send a photograph of that? Or did
09:57:21	2	management, or anything like that? Or did someone	10:08:36	2	someone send one to you?
09:57:24	3	come to you and ask you for those?	10:08:37	3	A No, I believe I took that picture and sent
09:57:26	4	A No.	10:08:39	4	it to Michael.
09:57:26	5	Q Do you know how they would have gotten	10:08:40	5	Q To Mike Rolow?
09:57:27	6	them?	10:08:42	6	A Yes.
09:57:28	7	A I do not.	10:08:42	7	Q All right.
09:57:30	8	Q Do you use a company phone?	10:08:45	8	And then his response, "Perfect. How hot
09:57:31	9	A I do.	10:08:50	9	today?"
09:57:32	10	Q Primarily. Okay.	10:08:51	10	And you sent back, "Not bad yet."
09:57:34	11	So UP pays the bill on it?	10:08:55	11	Then July 25th, Mr. Rolow says, "Get more
09:57:36	12	A Correct.	10:08:59	12	if you need them."
09:57:37	13	Q All right.	10:09:01	13	Is he referencing these tents?
09:57:38	14	I want to start on Exhibit 10.	10:09:03	14	A I assume so.
09:57:44	15	Do you see the first one there?	10:09:04	15	Q Then he says, "What was the heat index
09:57:45	16	It says, "7/25/15, 4:34." And I don't	10:09:07	16	today?" -- no, sorry. We have now shifted to the
09:57:52	17	know what "UTC plus zero" means, but is (307)	10:09:11	17	next day -- wait. Before we do that, still on
09:57:57	18	248-2055, is that your phone number?	10:09:14	18	July 25th, it says, "Get more if you need them," do
09:58:02	19	A It is.	10:09:20	19	you have a memory -- was this the first tent that
09:58:03	20	Q Understand this will remain confidential.	10:09:25	20	you had bought and then Rolow -- Mr. Rolow says,
09:58:06	21	It's not like I'm going to blab this to everybody	10:09:28	21	"Get more if you need them"?
09:58:06	22	in the state --	10:09:30	22	A I don't remember if it was the first or
09:58:06	23	A Sometimes I think everybody has already	10:09:32	23	just some additional ones. I don't remember.
09:58:10	24	got it.	10:09:34	24	Q All right.
09:58:11	25	Q Fair enough.	10:09:35	25	So it may have been the first?

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10:09:36	1	A It could have been. I'm not sure.	10:11:30	1	him these texts.
10:09:38	2	Q All right.	10:11:32	2	That was a guess on my part. I don't know
10:09:39	3	And then Mr. Rolow e-mails you back, "Get	10:11:33	3	if it was officially 10 degrees hotter. It just
10:09:42	4	more if you need them"?	10:11:37	4	usually feels a little hotter on the track.
10:09:44	5	A That's what it says.	10:11:40	5	Q Okay.
10:09:45	6	Q All right.	10:11:41	6	Then July 26th, at 11:52 you send another
10:09:46	7	Did you, between July 25th and 26th, get	10:11:44	7	one that says, "Night corridor, finally came on
10:09:51	8	more tents?	10:11:47	8	duty and is letting us stay cut in. Shutting it
10:09:52	9	A I don't remember if we did or not.	10:11:54	9	down."
10:09:54	10	Q Then on the July 26th, Mr. Rolow texts you	10:11:54	10	What does that mean? If you recall.
10:10:01	11	at 10:20 in the morning, "What was the heat index	10:11:56	11	A I'm going to back you up a little bit.
10:10:06	12	today?"	10:11:59	12	These times can't be correct on your notes. That
10:10:08	13	July 26th, you tell him, "It's 105."	10:12:03	13	wouldn't have happened -- at 11:25, I would have
10:10:13	14	And then it looks like you send him	10:12:07	14	been off duty -- 11:25 p.m. I question the 10:30
10:10:15	15	another one about four minutes later, 10:31, "Where	10:12:11	15	in the morning and 103. I don't think it was 103.
10:10:20	16	I'm standing, my phone says it feels like 103, so	10:12:14	16	I don't believe it was 103 at 10:30 in the morning.
10:10:24	17	probably 10 degrees hotter on the track."	10:12:17	17	I think the times are off on your documents.
10:10:29	18	Now, of course I want to ask you -- the,	10:12:20	18	Q They are not my documents. They are what
10:10:31	19	"Where I'm standing, my phone says" -- forgive my	10:12:23	19	I was sent by the UP.
10:10:34	20	ignorance here, I'm going to embarrass myself.	10:12:23	20	A I would have been fastly asleep at 11:25.
10:10:38	21	Do you have an app on your phone or	10:12:27	21	Anyway, back to question -- night corridor came on
10:10:38	22	something on your phone that will give you the heat	10:12:30	22	duty and letting us stay cut in -- that means that
10:10:38	23	index?	10:12:31	23	we were able to stay cut in on the track because we
10:10:38	24	A I do. It's just a weather channel app. I	10:12:34	24	were in between switches on the siding where trains
10:10:41	25	can show you the weather and what it feels like	10:12:36	25	would be able to run around us on the siding.
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10:10:43	1	right here.	10:12:38	1	Q Were you all working on the siding part of
10:10:44	2	Q Perfect.	10:12:41	2	the 26th?
10:10:46	3	A For some reasons. It will load up here.	10:12:42	3	A We were working on a main -- we were
10:10:48	4	But yes, that's what I was using was my phone at	10:12:44	4	adjacent to a siding, so the trains could go around
10:10:51	5	the time.	10:12:44	5	us.
10:10:52	6	Q All right.	10:12:44	6	Q I see.
10:10:54	7	That's -- I have a were on my phone and	10:12:46	7	So you could move into the siding to let
10:10:56	8	I'm certainly no expert -- that tells me the	10:12:48	8	the trains go around?
10:10:59	9	weather.	10:12:49	9	A We could stay on the main and trains go
10:10:59	10	A Correct.	10:12:52	10	around us on the siding.
10:10:59	11	Q This dials it down closer and gives you	10:12:53	11	Q So it's a siding that has switches above
10:11:03	12	the heat index?	10:12:56	12	them?
10:11:04	13	A It will give you the heat of the day and	10:12:56	13	A Yes, sir.
10:11:06	14	kind of what it feels like outside, but heat index,	10:12:56	14	Q So they can go around your work on the
10:11:10	15	but it won't load up heat.	10:12:58	15	main by going around on the siding?
10:11:13	16	Q Don't worry about it.	10:13:02	16	A Correct.
10:11:14	17	A Okay.	10:13:02	17	Q Got it.
10:11:15	18	Q Then you make the statement, "So probably	10:13:04	18	Okay.
10:11:17	19	ten degrees hotter on the track."	10:13:15	19	Now, there is a document published by the
10:11:20	20	What do you mean by that?	10:13:18	20	UP that tells us that on a sunny day, the rail
10:11:21	21	A When you are putting the rails on the	10:13:28	21	temperature can be 30 degrees more than the ambient
10:11:22	22	ballast, it usually feels a little bit hotter on	10:13:34	22	temperature.
10:11:26	23	the track than probably where I'm standing, because	10:13:35	23	Are you familiar with that from the
10:11:26	24	you can't have your cell phones on the track, so	10:13:37	24	Union Pacific Railroad Field Maintenance Handbook?
10:11:26	25	I'm sure I was off the tracks when I was sending	10:13:40	25	A Yes.

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10:13:41 1 Q Okay.
 10:13:41 2 So on a sunny day, the rail can be up to
 10:13:44 3 30 degrees hotter than the ambient temperature?
 10:13:48 4 A The rail itself?
 10:13:49 5 Q Correct.
 10:13:50 6 A Just the rail?
 10:13:51 7 Q Correct.
 10:13:52 8 MR. SCHMITT: The steel?
 10:13:54 9 BY MR. COX:
 10:13:54 10 Q Am I right?
 10:13:55 11 A The steel. Not in between the ballast,
 10:13:57 12 just the steel.
 10:13:58 13 Q Right.
 10:14:00 14 A Correct.
 10:14:00 15 Q Okay.
 10:14:30 16 Earlier, I had asked you about the
 10:14:32 17 assistant foreman, Charles Turner.
 10:14:39 18 Did he have any kind of injury or event
 10:14:41 19 that made it so that he couldn't work? Do you have
 10:14:44 20 any memory of that?
 10:14:46 21 A On the 24th?
 10:14:47 22 Q Or the 25th.
 10:14:48 23 A 25th? I believe he worked the 25th. On
 10:14:51 24 the 24th, he may have got put into the -- got back
 10:14:55 25 from his job briefing because he wasn't feeling

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10:14:58 1 very well.
 10:14:58 2 Q What was he not feeling well about?
 10:15:01 3 A The heat.
 10:15:02 4 Q Okay.
 10:15:02 5 That's Mr. Turner?
 10:15:04 6 A Yeah.
 10:15:04 7 Q So instead of the being out on the track,
 10:15:06 8 he goes back into the cooling station?
 10:15:08 9 A Correct, correct.
 10:15:10 10 Q What part of the day? If you remember.
 10:15:11 11 A I don't remember the exact part. If my
 10:15:13 12 memory serves me correctly, it was the last part of
 10:15:15 13 the day, because after he got cooled down, he was
 10:15:19 14 feeling better and wanted to go back out and work.
 10:15:22 15 And I told him, "No, it's too close to the end of
 10:15:23 16 the day. You weren't feeling well. We will just
 10:15:23 17 keep you cooled off." So I kept him in the cooling
 10:15:23 18 station, working -- right there the last two jobs
 10:15:26 19 of the day.
 10:15:27 20 Q And what day was that?
 10:15:28 21 A I believe it was the 24th. I'm not 100
 10:15:30 22 percent certain on that.
 10:15:36 23 Q All right.
 10:15:38 24 And do you have a memory -- did he return
 10:15:40 25 to work regular duty the 26th or 27th or 28th?

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10:15:46 1 A Yeah, as far as I remember, yeah, that was
 10:15:48 2 the only -- just a cooling break for a couple
 10:15:52 3 hours.
 10:15:52 4 Q All right.
 10:15:53 5 A Which is very common.
 10:15:55 6 Q Right.
 10:15:56 7 Now, the -- well, let me go back to
 10:16:01 8 that -- is it common that a person will have to
 10:16:05 9 spend several hours in a cooling station?
 10:16:08 10 A Not several hours. But it's very common
 10:16:11 11 for somebody to go into a cooling station, a
 10:16:13 12 vehicle. The cooling stations we set up, sometimes
 10:16:17 13 back to job briefing to cool down -- so not several
 10:16:21 14 hours. And one of the reasons that Turner was in
 10:16:24 15 there longer is because I did not need him to go
 10:16:27 16 back out on the track that day even though he
 10:16:31 17 wanted to return, so I just left him in there.
 10:16:34 18 Q You were just looking out for his
 10:16:36 19 safety?
 10:16:36 20 A Absolutely.
 10:16:37 21 Q Okay.
 10:16:38 22 Now, were you ever on July 25th or 26th,
 10:16:41 23 back with the cleanup crew to watch what they were
 10:16:45 24 doing? Do you have a memory of that?
 10:16:46 25 A On the 25th or 26th --

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10:16:48 1 Q Yes.
 10:16:49 2 A I don't have a memory of that, so I
 10:16:51 3 wouldn't recall. I'm sure I was at some point, but
 10:16:53 4 I don't have a recollection of it.
 10:16:54 5 Q All right.
 10:16:55 6 Can you think of a reason why an assistant
 10:16:57 7 foreman on the cleanup crew would not use the P-car
 10:17:01 8 to clip the clips back on if it were operating
 10:17:06 9 properly?
 10:17:07 10 A If it was operating properly, because we
 10:17:10 11 have a camp car that would perform that duty.
 10:17:13 12 Q What does the P-car do again?
 10:17:15 13 A It mainly declips.
 10:17:17 14 Q Okay.
 10:17:17 15 If the P-car is working properly, do you
 10:17:20 16 expect it to be used?
 10:17:22 17 A Yes. Absolutely.
 10:17:23 18 Q All right.
 10:17:24 19 Now, your name showed up on one other
 10:17:26 20 document I wanted to ask you about.
 10:17:30 21 If you could mark that.
 10:17:47 22 We marked the highlighted one -- but
 10:17:49 23 that's okay.
 10:17:51 24 This is a memo from the Health & Medical
 10:17:52 25 Services Department of Union Pacific Railroad.

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10:17:55 1 Do you see that there in the top left
 10:17:57 2 corner?
 10:17:58 3 A Okay.
 10:17:58 4 Q Dated April 28th, 2016, and you are copied
 10:18:01 5 on it, Joseph Linford.
 10:18:03 6 A Okay.
 10:18:05 7 (Plaintiff's Exhibit 11 was marked
 10:18:05 8 for identification, a copy of which is
 10:18:05 9 attached hereto.)
 10:18:06 10 BY MR. COX:
 10:18:06 11 Q And it's a fitness for duty determination
 10:18:09 12 about Guillermo Herrera. And he is -- "medical
 10:18:12 13 review on duty" -- it's checked "on duty" -- "Based
 10:18:16 14 on medical information available to Health &
 10:18:18 15 Medical Services at this time, this employee is not
 10:18:22 16 medically cleared temporary effective April 28th,
 10:18:24 17 2016, MLOA" -- that's "medical leave of absence";
 10:18:28 18 is that right?
 10:18:29 19 A That's what I take it for. Not sure.
 10:18:31 20 Q "Recommended effective April 18, 2016
 10:18:34 21 through June 30, 2016."
 10:18:37 22 "In accordance with Union Pacific
 10:18:39 23 medical" -- "Union Pacific Railroad
 10:18:40 24 medical rules, this employee will require
 10:18:44 25 a fitness for duty review prior to his or

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10:18:47 1 her return to work.
 10:18:49 2 "Please be sure that the employee
 10:18:50 3 contacts the FFD, fitness for duty, nurse
 10:18:54 4 upon their request to return to work."
 10:18:57 5 Are you familiar with this notification
 10:18:59 6 form from the Health Services Department?
 10:19:01 7 A I am familiar with the form. I'm not
 10:19:03 8 familiar with this exact form.
 10:19:04 9 Q All right.
 10:19:05 10 A This is the first time looking at this
 10:19:07 11 exact form.
 10:19:08 12 Q Right.
 10:19:09 13 Why are you copied on this?
 10:19:11 14 A I do not know. I imagine because I'm a
 10:19:13 15 supervisor.
 10:19:13 16 Q Just to update you on the condition of one
 10:19:16 17 of your employees?
 10:19:17 18 A More than likely. I would be guessing to
 10:19:19 19 know for sure why. But that would be my guess.
 10:19:22 20 Q Okay.
 10:19:41 21 Now, I'm handing you what is marked as
 10:19:43 22 Exhibit 12.
 10:19:48 23 This is also information that I was
 10:19:50 24 provided by the Union Pacific Railroad. And you
 10:19:55 25 did not -- on July 26th, the day of Mr. Herrera's

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10:20:02 1 heat injury, did you ever talk with him during the
 10:20:04 2 day or observe him during the day?
 10:20:07 3 A Not that I recall.
 10:20:09 4 (Plaintiff's Exhibit 12 was marked
 10:20:09 5 for identification, a copy of which is
 10:20:09 6 attached hereto.)
 10:20:10 7 BY MR. COX:
 10:20:10 8 Q I gather, then, you did not go to the
 10:20:11 9 hospital with him?
 10:20:12 10 A No, I did not.
 10:20:13 11 Q Did you see him at all when he had
 10:20:16 12 returned briefly to the cooling station?
 10:20:18 13 A No, I did not.
 10:20:19 14 Q All right.
 10:20:20 15 The record will establish, I think, that
 10:20:21 16 that fell to Carlos Diaz?
 10:20:24 17 A It did.
 10:20:25 18 Q All right.
 10:20:31 19 Now, Exhibit 12 is information that I was
 10:20:36 20 furnished by the Union Pacific Railroad containing
 10:20:39 21 what I believe are e-mails between the supervisors
 10:20:45 22 on the gang 8501. And I don't see you copied on
 10:20:53 23 any of them and I'm not going to ask you about any
 10:20:56 24 except this one.
 10:20:58 25 If you will go to Bates 00497, do you see

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10:21:02 1 in the bottom right-hand corner there?
 10:21:05 2 A Uh-huh.
 10:21:11 3 507?
 10:21:12 4 Q No, sorry. 497?
 10:21:14 5 A 497?
 10:21:20 6 Q And this is from Louis Martinez, who we
 10:21:24 7 understand from your description of the chain of
 10:21:26 8 command, is the director for rail northwest?
 10:21:29 9 A Correct.
 10:21:29 10 Q He is above Mr. Mike Rolow in the chain of
 10:21:33 11 command?
 10:21:33 12 A Yes.
 10:21:34 13 Q And he sends it to several people,
 10:21:39 14 including -- I thought I saw your name -- yes,
 10:21:46 15 "Joe R. Linford" on about the third line. This
 10:21:49 16 e-mail comes from Louis Martinez to a bunch of
 10:21:52 17 people on the UP, one of whom is you.
 10:21:55 18 Do you see your name on there?
 10:21:56 19 A I do.
 10:21:59 20 Q And the subject is "8501 cut Kansas Sub
 10:22:03 21 incident."
 10:22:04 22 And if we look earlier in exhibit, for
 10:22:07 23 example, on UP e-mail 0003 Bates 488 -- right there
 10:22:16 24 I think it is -- Kansas City sub 8501 incident,
 10:22:22 25 July 26th, 2015."

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10:22:24 1 It's basically a description of what had
 10:22:26 2 occurred.
 10:22:28 3 If you will go to 490, you see it says at
 10:22:34 4 approximately -- we are looking at Bates 490.
 10:22:39 5 A Let me find it here for you. There we go.
 10:22:46 6 There we go. Okay.
 10:22:47 7 Q At approximately 11:30 a.m. on July 26th
 10:22:53 8 2015 at milepost 92.80 on Kansas sub, this got
 10:22:56 9 cleared 113 heat index.
 10:23:00 10 Do you know? Are you familiar with this
 10:23:01 11 form? This incident report either in test --
 10:23:05 12 A I have seen these before. It's pretty
 10:23:08 13 common protocol across the Union Pacific. I did
 10:23:11 14 not create this form, no.
 10:23:13 15 Q Understood.
 10:23:14 16 Let's go back, then, to the e-mail on page
 10:23:21 17 Bates 503. And I'm just going to review this with
 10:23:27 18 you and sort of get your response to it.
 10:23:30 19 A Excuse me.
 10:23:31 20 Where are we at here again?
 10:23:32 21 Q Right here.
 10:23:34 22 If you go to 503 -- Bates 503?
 10:23:41 23 A Okay. Trying to keep up.
 10:23:44 24 Q I understand.
 10:23:45 25 Believe me, sometimes it's hard to do.

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10:23:49 1 This is an e-mail on July 26th, 2015, at
 10:23:54 2 8:25 p.m.
 10:23:57 3 "Attached is an incident write-up on
 10:23:59 4 team 8501 working on the Kansas Sub.
 10:24:03 5 Today the team had an employee who
 10:24:06 6 experienced heat stress symptoms and was
 10:24:08 7 taken to the hospital and was given an IV
 10:24:10 8 with fluids and prescribed potassium.
 10:24:14 9 Team got track time at 7Am and incident
 10:24:17 10 occurred approximately 11AM. Employee was
 10:24:20 11 a PCAR operator working behind the team
 10:24:22 12 doing cleanup. Therefore, overexertion is
 10:24:25 13 not the cause of this incident. The cause
 10:24:27 14 is the employee was not acclimated to the
 10:24:31 15 humidity and possibly not fit for the
 10:24:32 16 conditions."
 10:24:34 17 Do you have any idea where Mr. Martinez
 10:24:37 18 got that information?
 10:24:38 19 MR. SCHMITT: Foundation.
 10:24:39 20 BY MR. COX:
 10:24:39 21 Q Did Mr. Martinez ever talk to you about
 10:24:43 22 Guillermo Herrera's acclimation or physical
 10:24:46 23 fitness?
 10:24:47 24 A No, he didn't.
 10:24:49 25 Q Did you know Guillermo?

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10:24:50 1 A He has worked for me somewhere around a
 10:24:54 2 year.
 10:24:55 3 Q How would you describe his level of
 10:24:57 4 fitness?
 10:24:59 5 A Mr. Herrera was not the fittest person by
 10:25:01 6 any means. Also, Mr. Guillermo (sic) was kind of
 10:25:03 7 hard to understand sometimes. Sometimes, like,
 10:25:07 8 English will be his second language. Mr. Guillermo
 10:25:10 9 had also had a lisp when you talked to him. And
 10:25:14 10 one time, in fact, in talking to Mr. Guillermo, you
 10:25:18 11 will notice half his face was not quite working
 10:25:20 12 right, so I was concerned. I asked him what was
 10:25:23 13 wrong. He stated he got bell's palsy. He almost
 10:25:27 14 acted kind of embarrassed about it. So I kind of
 10:25:30 15 ended the situation there.
 10:25:32 16 Long story short, not the fittest guy out
 10:25:35 17 there.
 10:25:36 18 Q Wow, I feel like we are talking about two
 10:25:38 19 different people here.
 10:25:40 20 You are sure this is Guillermo, nicknamed
 10:25:42 21 "Superman"?
 10:25:44 22 A Yeah, yeah.
 10:25:44 23 Q He told you he had a bell's palsy?
 10:25:47 24 A Yes, sir.
 10:25:47 25 Q In his face?

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10:25:49 1 A Yes. One time when I was talking to him,
 10:25:51 2 half his face was kind of paralyzed, not working,
 10:25:56 3 so it made it a concern for me. And he shrugged it
 10:25:59 4 off saying it was bell's palsy. I could be wrong
 10:26:02 5 on the medical term on this, but a palsy something
 10:26:06 6 condition, and it would go away in a short time.
 10:26:10 7 Q And it would go away in a short time?
 10:26:13 8 A Yeah.
 10:26:14 9 Q Did it ever cause you any concern about
 10:26:15 10 his ability to do his job?
 10:26:17 11 A No, like I said, he was more embarrassed
 10:26:19 12 about it, the talking and confrontation about it.
 10:26:23 13 That's the only time I remember it occurring.
 10:26:24 14 Q When was that?
 10:26:25 15 A You asked -- I don't recall. It would
 10:26:29 16 have been six months prior to this incident,
 10:26:30 17 perhaps.
 10:26:31 18 Q Did it clear? Did it go away?
 10:26:33 19 A Yeah, it was the one time isolated. To
 10:26:36 20 overall help, I'm trying to get you a description.
 10:26:38 21 But other than that, Guillermo was able to do his
 10:26:41 22 duties. He just wasn't maybe the fittest person in
 10:26:45 23 the world.
 10:26:46 24 Q My experience on these gangs is that
 10:26:49 25 everybody -- most of the guys get a nickname out

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10:26:52	1 there. Guillermo's nickname was "Superman." Where	10:28:45	1 complaints. I'm trying to think of one.
10:26:56	2 would he get a name like "Superman"? A nickname	10:28:48	2 Q Let me prompt you.
10:27:00	3 like "Superman"?	10:28:49	3 A Okay.
10:27:02	4 A I would be guessing if I told you. I have	10:28:50	4 Q Did he ever complain to you about
10:27:03	5 an opinion, but I don't have any facts on where he	10:28:51	5 Scott Nicholson and his performance as an assistant
10:27:05	6 would get a nickname like "Superman."	10:28:55	6 foreman on a cleanup crew?
10:27:08	7 Q All right.	10:28:57	7 A Not to me directly.
10:27:10	8 Had --	10:28:59	8 Q To whom?
10:27:10	9 A Can I go ahead and guess? Is it fine for	10:29:00	9 A I don't know.
10:27:13	10 me to guess?	10:29:00	10 Q Do you know that he complained to someone
10:27:15	11 Q If you want to guess.	10:29:01	11 about Scott Nicholson and his performance as an
10:27:16	12 A Sometimes nicknames can be the opposite.	10:29:04	12 assistant foreman?
10:27:20	13 You might call a big, heavy guy "Slim" -- "Big	10:29:05	13 A After the fact.
10:27:27	14 Slim." "Superman" could be the opposite of	10:29:06	14 Q How did you learn that?
10:27:31	15 "Superman" -- if you are following me.	10:29:07	15 A Hearsay, I guess.
10:27:32	16 Q Do you know how his coworkers described	10:29:09	16 Q Talking to the guys?
10:27:34	17 his work ethic?	10:29:10	17 Did you talk to other guys that were
10:27:37	18 A No, sir.	10:29:12	18 working on the cleanup crew with him?
10:27:37	19 Q Do you know that their nickname for	10:29:14	19 Mr. Davidson? Jeremy Mansing? Those fellows?
10:27:40	20 Guillermo was "Superman" because he worked harder	10:29:21	20 Did you ever talk to them after this
10:27:43	21 or at least as hard as anyone on that gang?	10:29:22	21 incident to learn how Scott Nicholson was running
10:27:45	22 MR. SCHMITT: Objection, foundation.	10:29:26	22 the cleanup crew?
10:27:46	23 THE WITNESS: No, just giving my opinion	10:29:27	23 A Not to my knowledge on how Scott was
10:27:48	24 where it comes from, just my opinion.	10:29:30	24 running it. I'm sure I talked to them about the
10:27:51	25 ///	10:29:32	25 incidents and how he was doing and if they saw any
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10:27:51	1 BY MR. COX:	10:29:35	1 signs or things like that. But I don't remember
10:27:51	2 Q All right.	10:29:38	2 anything on Scott Nicholson's performance with
10:27:52	3 So other than this isolated incident where	10:29:40	3 them.
10:27:55	4 there was some problem with his face, did he have	10:29:40	4 Q Did you ever talk to them about whether or
10:27:56	5 any other physical problems that you observed --	10:29:42	5 not they had asked Scott Nicholson to use the P-car
10:28:00	6 A No.	10:29:45	6 to declip the ties rather than making them do it by
10:28:00	7 Q -- that year?	10:29:49	7 hand?
10:28:01	8 A No, no, just the face.	10:29:51	8 A I don't recall that conversation.
10:28:03	9 Q And you recall Guillermo has good sized	10:29:52	9 Q Okay.
10:28:05	10 arms, wears a T-shirt, big chest?	10:29:54	10 Now, if you have any concern about
10:28:08	11 A Bigger guy, yeah. Not very tall.	10:29:57	11 employee's ability to do their job safely, you have
10:28:12	12 Q Okay.	10:30:00	12 the right, under the UP medical rules, to call that
10:28:20	13 Well, other than what -- for example, did	10:30:03	13 person in for a fitness-for-duty evaluation?
10:28:22	14 you ever observe him work?	10:30:06	14 A That's correct.
10:28:23	15 A Yes, of course I did.	10:30:07	15 Q Did you ever do anything like that on
10:28:25	16 Q And how was his work ethic?	10:30:09	16 Guillermo Herrera?
10:28:27	17 A It was fine.	10:30:10	17 A No, no.
10:28:31	18 Q Was he a complainer?	10:30:11	18 Q All right.
10:28:33	19 A At times, yes.	10:30:14	19 I'm back on Mr. Martinez's e-mail to all
10:28:34	20 Q Was everybody on the gang a complainer at	10:30:18	20 of those people.
10:28:37	21 times?	10:30:20	21 It says:
10:28:37	22 A No, not everybody.	10:30:20	22 "This is not the way we wanted to
10:28:38	23 Q What would he complain about?	10:30:23	23 start our work half!" with an exclamation
10:28:40	24 A Various things. And I can't remember the	10:30:28	24 point. "This is the third heat incident
10:28:42	25 exact details of complaints. But there has been	10:30:31	25 we have had in the last four weeks, which

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10:30:32	1	indicates we are doing a poor job with our	10:32:55	1	to ensure that heat mitigation action was being
10:30:35	2	heat prevention plans and just going	10:33:00	2	done consistently on a daily basis?
10:30:37	3	through the motions."	10:33:04	3	A Nothing out of the -- what we were doing
10:30:39	4	Let me ask you this: Do you know who any	10:33:06	4	before. Nothing changed. Basically, we were doing
10:30:43	5	of the other three heat incident employees were?	10:33:10	5	all of the procedures correctly before.
10:30:47	6	A I do not.	10:33:12	6	Q So do you take exception with
10:30:48	7	Q Was Charles Turner one of them?	10:33:14	7	Mr. Martinez's appraisal of the conduct of your
10:30:50	8	A I do not know.	10:33:21	8	gang as it relates to heat mitigation?
10:30:59	9	Q Mr. Martinez continues, "Therefore, I want	10:33:27	9	A Well, no, not right now, I don't.
10:31:00	10	each of you to send your summer spike plan to your	10:33:30	10	Q Okay.
10:31:04	11	manager with a copy to me."	10:34:12	11	Oh, when the cleanup crew is fully manned,
10:31:06	12	What is a "summer spike plan"?	10:34:15	12	how many people and machines are there on the
10:31:12	13	A Yeah, I don't know. I would be guessing	10:34:16	13	cleanup crew?
10:31:14	14	for sure. I kind of know what it is. I don't know	10:34:17	14	A It varies. There's two machines. Your
10:31:16	15	what he is referring to exactly on the "summer	10:34:20	15	P-car and cab car. And the employees vary from day
10:31:20	16	spike plan."	10:34:25	16	to day.
10:31:22	17	We get documents, at times, come down from	10:34:26	17	Q Why is that?
10:31:26	18	directors on a summer spike agenda. Not sure what	10:34:27	18	A Well, cleanup -- quality control parts is
10:31:29	19	he is referring to exactly on that e-mail.	10:34:30	19	kind of separate of the production part. It's kind
10:31:31	20	Q Is a summer spike plan a memo to pay	10:34:34	20	of the overflow process because we are able to give
10:31:35	21	particular or greater attention to an issue?	10:34:36	21	the track back and run trains regardless of what
10:31:39	22	Particularly in the summer?	10:34:40	22	your quality is -- because you are able to run
10:31:41	23	MR. SCHMITT: Objection, form. Don't	10:34:43	23	trains. The quality does not have to finish the
10:31:42	24	guess if you don't know.	10:34:45	24	finish line to run the trains. But it also needs
10:31:45	25	THE WITNESS: Yeah, I don't know.	10:34:48	25	to be done. It just doesn't need to be done on a
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10:31:45	1	BY MR. COX:	10:34:51	1	time crunch basis.
10:31:46	2	Q Did you ever prepare a summer spike plan	10:34:53	2	So as a group in the front would get done,
10:31:48	3	based on estimates you -- this is sent to you. Did	10:34:55	3	we can send some guys in the back. If we have got
10:31:50	4	you ever prepare a summer spike plan and submit it	10:34:58	4	a full consist, there will be some more guys in
10:31:53	5	to your manager?	10:35:01	5	there. If we have got some vacation or people
10:31:54	6	A Not that I remember.	10:35:04	6	missing for the day, it could be a little less.
10:31:57	7	Q Did you ever see a summer spike plan	10:35:06	7	On an average, there's two operators and
10:32:00	8	prepared by your manager? And that is Mike Rolow?	10:35:09	8	at least two people on the ground. And that's on
10:32:05	9	A Uh-huh.	10:35:12	9	an average. But you can have anywhere from six
10:32:05	10	Q Did you ever see a summer spike plan	10:35:16	10	people to 20 people back there.
10:32:07	11	prepared by Mike Rolow in response to	10:35:17	11	Q So an operator for the P-car, operator for
10:32:11	12	Mr. Martinez's e-mail?	10:35:20	12	the cab car and two people on the ground and an
10:32:12	13	A Once again, not that I remember.	10:35:23	13	assistant foreman?
10:32:14	14	Q Then he goes on to say, "Each manager will	10:35:24	14	A On an average, yes.
10:32:20	15	develop one plan for his teams to ensure heat	10:35:26	15	Q But that number can go up if people are
10:32:24	16	mitigation action is being done consistently on a	10:35:29	16	freed up from their tasks ahead -- earlier in the
10:32:28	17	daily basis."	10:35:37	17	game?
10:32:31	18	Did you ever see a heat mitigation action	10:35:38	18	A Correct.
10:32:33	19	plan provided to you by Mike Rolow?	10:35:48	19	Q Was Scott Nicholson present at the
10:32:38	20	A Again, I may or may not have. I just	10:35:51	20	foreman's meeting on the morning of July 26th,
10:32:40	21	don't remember right now.	10:35:55	21	2015?
10:32:42	22	Q Then it says, "Thereafter, managers and	10:35:56	22	A I'm sure he was if he was there that day.
10:32:44	23	all supervisors are to follow up daily to ensure	10:36:00	23	Q And was he that day assigned as the
10:32:47	24	plan is being executed."	10:36:02	24	assistant foreman of the cleanup crew?
10:32:51	25	What was done, in your memory, afterward,	10:36:05	25	A Yes, he was.

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10:36:06	1	Q How long had Mr. Nicholson been on the	10:38:21	1	Q So if laborers, for example, stop and take
10:36:09	2	8501 -- gang 8501?	10:38:25	2	a 15-minute break every hour, that stops the gang,
10:36:13	3	A I don't remember the exact day.	10:38:31	3	essentially? Or are the 15 minutes staggered?
10:36:14	4	Q Was he a fairly new guy?	10:38:35	4	A It's up to the assistant foreman to watch
10:36:16	5	A To my knowledge, he was fairly new, within	10:38:38	5	his clock to make sure from their last time period
10:36:19	6	probably a month or two, if I was to guess.	10:38:42	6	that they get another break within the next hour is
10:36:21	7	Q Do you have any knowledge of his level of	10:38:46	7	what handles that. To make sure -- and the
10:36:24	8	experience as a foreman on a steel gang working on	10:38:48	8	employees can take more breaks, that's just the
10:36:28	9	concrete ties?	10:38:52	9	minimum they need to take.
10:36:30	10	A Assistant foreman.	10:38:54	10	Q If they take those breaks, do they take
10:36:31	11	Q "Assistant foreman." Sorry.	10:38:56	11	them as a group?
10:36:33	12	A If I -- if I remember right, he didn't	10:38:58	12	In other words, if the crew -- cleanup
10:36:36	13	have much experience on a steel gang. I believe he	10:39:00	13	crew is supposed to take a 15-minute break every
10:36:39	14	came from a curve gang. But once again, I don't	10:39:06	14	hour, would the whole crew take it at the same
10:36:42	15	know for sure. I'm just using my best guess there.	10:39:08	15	time?
10:36:53	16	Q Do you know what a work ratio was?	10:39:09	16	A Not necessarily. Again, the call is in
10:36:56	17	In other words, how much work one does,	10:39:11	17	the assistant foreman's hands. If he has four guys
10:36:58	18	versus how much one rests when working in hot or	10:39:14	18	there, he can put one person at a time on a
10:37:03	19	extreme heat conditions? Do you know what I mean	10:39:16	19	break -- if you are following me -- or he could
10:37:06	20	by that?	10:39:19	20	have all of them take a break at the same time,
10:37:06	21	A Do I know what it's supposed to be in?	10:39:21	21	depending where they are at.
10:37:10	22	Q What a work ratio is?	10:39:24	22	If they go by a cooling station, he will
10:37:12	23	A I think I'm following you, how much he	10:39:26	23	try to get everybody in the cooling station. If
10:37:14	24	works versus how much he rests, time period.	10:39:28	24	there's a bus where they see it, they try to -- if
10:37:18	25	Q Right.	10:39:31	25	one guy needs a break longer -- it's up to them,
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10:37:19	1	Now we knew that the heat index was, I	10:39:36	1	but there's different ways they can manage that.
10:37:22	2	think, going to be 102 on July 26th. At least 102	10:39:38	2	Q So if 15 minutes an hour is work/rest
10:37:25	3	on July 26th.	10:39:41	3	ratio in place on that gang, that means in an
10:37:28	4	What was -- what is your understanding of	10:39:43	4	eight-hour day, they take two hours worth of
10:37:29	5	what the work/rest ratio would be for employees	10:39:46	5	breaks?
10:37:34	6	doing heavy physical work in a 102 heat index?	10:39:47	6	A Not necessarily. You have to be in the
10:37:38	7	A You would have to -- I would have to	10:39:48	7	heat index in the red. You may have been at 101.
10:37:40	8	reference back to the UP heat index chart. It's	10:39:53	8	You are not going to be at 101 at 6:00 in the
10:37:43	9	either going to be in the yellow or red there. I'm	10:39:56	9	morning. You may hit that at 3 o'clock in the
10:37:45	10	assuming it would probably be in the red -- which	10:39:57	10	afternoon to 5 o'clock, so you might have it the
10:37:48	11	would be 15-minute breaks every hour -- but I would	10:39:58	11	last two hours of the day. Depending how the
10:37:55	12	have to double-check to make sure on that.	10:40:01	12	weather is.
10:37:56	13	Q Where -- have you ever seen any documents	10:40:02	13	Q When the heat index is in the red, it's
10:37:59	14	published on the UP that say that -- that say you	10:40:04	14	your understanding that the employees are to be
10:38:02	15	have to have a 15-minute break every hour when the	10:40:06	15	given by their supervisor, or foreman or assistant
10:38:05	16	heat index is in the red? Do you see that in the	10:40:09	16	foreman, a 15-minute break every hour?
10:38:05	17	documents?	10:40:11	17	A Correct. And the employees know if their
10:38:05	18	A Yes. I see that, yes.	10:40:13	18	assistant foreman forgets them, that they need to
10:38:09	19	Q What would those be?	10:40:16	19	make sure they are getting their break in. It's
10:38:11	20	A I don't know what those are -- yeah, I	10:40:18	20	not just the foreman's responsibility to make sure
10:38:13	21	would be guessing if I did.	10:40:20	21	they are because we are working and could lose
10:38:15	22	Q Okay.	10:40:23	22	track of time.
10:38:17	23	So how does the gang take -- is that true	10:41:03	23	Q If the heat index is in the extreme danger
10:38:19	24	for everybody on the gang?	10:41:11	24	zone, in your experience, does the Union Pacific
10:38:21	25	A Yes.	10:41:17	25	Railroad give any consideration to not working?

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10:41:19	1	A To not working?	10:45:52	1	Let's go to page 10 in the document, which
10:41:22	2	Yeah, I'm sure they would, absolutely. If	10:45:55	2	is Bates 306. These are documents that I received
10:41:24	3	it got too extreme out there, the conditions	10:45:58	3	from the Union Pacific Railroad.
10:41:27	4	weren't -- were dangerous, then absolutely.	10:46:00	4	That's the heat index table that we were
10:41:29	5	Q Okay.	10:46:02	5	talking about.
10:41:33	6	And in your experience, how hot would it	10:46:02	6	A Yes, it is the chart I referred to.
10:41:35	7	have to be for that to occur? Where on the heat	10:46:04	7	Q And when we were talking about a heat
10:41:38	8	index would that have to be for that to occur?	10:46:07	8	index in the red, we can see that on the form.
10:41:39	9	A I don't know. There's no line on this	10:46:10	9	Just hold it up because the jury will
10:41:41	10	that says, "Once it hits this, shut down	10:46:12	10	be -- they will have a copy in front of them when
10:41:45	11	operations" or anything.	10:46:14	11	we are talking about this.
10:42:10	12	Q Has that policy of possibly not working in	10:46:16	12	A (Witness complies).
10:42:14	13	extreme heat changed in the past couple of years?	10:46:18	13	Q But the red, we can tell by the code at
10:42:18	14	A Not to my knowledge.	10:46:21	14	the bottom is "Extreme heat procedures to be
10:42:27	15	Q There is a -- let me get that out -- let's	10:46:25	15	implemented."
10:42:34	16	go off the record for just a second.	10:46:27	16	Do you see that?
10:42:39	17	THE VIDEOGRAPHER: We are going off the	10:46:27	17	A I do see that.
10:42:39	18	record.	10:46:28	18	Q And if we look at the document that
10:43:50	19	(Pause in the proceedings.)	10:46:34	19	contained the memo from -- or the e-mail from
10:43:50	20	THE VIDEOGRAPHER: We are back on the	10:46:45	20	Mr. Martinez, you see on Exhibit 3 there, it says,
10:43:52	21	record.	10:46:49	21	"Clear and 101 heat index"?
10:43:56	22	BY MR. COX:	10:46:54	22	A I see that.
10:43:56	23	Q Maybe I can find it. Sorry. Let's go	10:46:55	23	Q "Clear" would mean it was "clear weather"?
10:43:59	24	back off. I don't want you to have to use your	10:46:58	24	A I assume that.
10:44:03	25	memory. Let me find that.	10:47:00	25	Q And 113 heat index?
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10:44:05	1	THE VIDEOGRAPHER: Going off the record.	10:47:02	1	A Okay.
10:44:56	2	(Pause in the proceedings.)	10:47:03	2	Q If we look on this document, 113 heat
10:44:56	3	THE VIDEOGRAPHER: We are back on the	10:47:06	3	index is in the red.
10:44:57	4	record.	10:47:09	4	A Correct.
10:44:59	5	MR. COX: Could you mark that for me,	10:47:10	5	Q And that requires extreme heat procedures
10:45:00	6	please, ma'am.	10:47:13	6	to be implemented.
10:45:12	7	(Plaintiff's Exhibit 13 was marked	10:47:14	7	A Correct.
10:45:12	8	for identification, a copy of which is	10:47:16	8	Q And if we go to page 12 of the document,
10:45:12	9	attached hereto.)	10:47:22	9	UP Herrera Bates 308, Appendix C, "High Heat
10:45:13	10	BY MR. COX:	10:47:30	10	Procedures."
10:45:13	11	Q Mr. Linford, I'm going to hand you what I	10:47:32	11	It says, "Ensure that all employees
10:45:16	12	have marked as Exhibit 13. This is a Union Pacific	10:47:34	12	exposed to the high heat take a rest break for at
10:45:21	13	Railroad document, "Quality Safety Meeting Process	10:47:38	13	least five minutes every hour."
10:45:21	14	Heat Stress Prevention, Topic: Preventing	10:47:41	14	That's why I had asked you earlier if you
10:45:25	15	Illnesses due to Heat Stress," dated May 2014.	10:47:43	15	had seen anywhere where it said 15 minutes an hour?
10:45:30	16	"This information is provided to assist	10:47:46	16	A Okay. Nope. I must not have. Like I
10:45:33	17	supervisors in refocusing our safety efforts."	10:47:49	17	said earlier, I would have to refer to the chart on
10:45:37	18	Do you see that?	10:47:53	18	actual protocols.
10:45:38	19	A I do.	10:47:55	19	Q I'm not trying to give you a pop quiz.
10:45:39	20	Q "Contents: Leader's Guide."	10:47:58	20	A Right. And this -- the 15 minutes is in
10:45:44	21	And I just want to move to part of it	10:48:00	21	there. Sometimes we can take extreme measures.
10:45:47	22	here.	10:48:03	22	Q Okay.
10:45:48	23	Are you familiar with this document?	10:48:03	23	A There you go -- I read it somewhere.
10:45:49	24	A Yes, I'm very familiar with this document.	10:48:06	24	Q Hang on. I'm going to get to that.
10:45:51	25	Q Okay.	10:48:08	25	A Sorry.

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10:48:08 1 Q Then it says under Appendix C, the last
 10:48:12 2 bullet:
 10:48:14 3 "When practicable, schedule work
 10:48:15 4 in hot areas for cooler months and/or
 10:48:18 5 cooler parts of the day."
 10:48:22 6 Do you see that?
 10:48:22 7 A Okay.
 10:48:22 8 Q That's under high heat procedures.
 10:48:26 9 Appendix D is extreme heat procedures.
 10:48:28 10 "Extreme heat procedures will be
 10:48:28 11 initiated when the heat index is in the
 10:48:31 12 red as shown on the Heat Index Table
 10:48:33 13 (Appendix A). In addition to those
 10:48:37 14 procedures in Appendix B and C,
 10:48:40 15 supervisors will ensure that all employees
 10:48:42 16 exposed to the extreme heat take a rest
 10:48:45 17 break for at least 15 minutes every hour."
 10:48:48 18 Correct?
 10:48:48 19 A That's what it says. Yes, you did.
 10:48:51 20 Q So C, High Heat Procedures says, "When
 10:48:57 21 practicable, schedule work in hot areas for cooler
 10:49:01 22 months and/or cooler parts of the day."
 10:49:04 23 My question is I had asked you about that
 10:49:07 24 earlier in another deposition -- and let me hand
 10:49:11 25 this to you. First, let me show you the cover.

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10:49:18 1 This is a deposition of you in another case,
 10:49:22 2 Jared Whitt versus Union Pacific Railroad taken
 10:49:26 3 April 30, 2013. And I want to direct your
 10:49:30 4 attention to page 41.
 10:49:38 5 And I had asked you earlier whether or not
 10:49:39 6 any consideration was given to not working or
 10:49:41 7 cutting back on the work when the heat index is
 10:49:44 8 going to be high or in the "extreme danger" part on
 10:49:50 9 the heat index.
 10:49:54 10 And in there, you said -- I asked you this
 10:49:57 11 question -- I'm going to -- I'm going to have to
 10:50:01 12 kind of read it with you here because I didn't
 10:50:03 13 bring another copy of it. But it says, "When
 10:50:06 14 practicable, schedule work for cooler months and/or
 10:50:11 15 cooler parts of the day."
 10:50:14 16 "Were you provided, by the UP, the
 10:50:15 17 option of working 6:00 to 11:00, 5:00 to
 10:50:18 18 8:00, 6:00 in the morning until sometime
 10:50:21 19 taking a break during the heat of the day,
 10:50:24 20 working on your machines, gassing your
 10:50:29 21 machines -- working on your machines and
 10:50:29 22 then resuming work -- I don't know, 5:00
 10:50:33 23 to eight o'clock in the morning, something
 10:50:36 24 like that?
 10:50:37 25 "Answer: No.

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10:50:37 1 "And would that create a problem for
 10:50:39 2 train movement?"
 10:50:41 3 And your answer was, "Sure, if you were
 10:50:42 4 able to do that." And then read me your answer, if
 10:50:48 5 you would, please.
 10:50:48 6 A Okay.
 10:50:49 7 MR. SCHMITT: Just a minute. I need to
 10:50:50 8 object to the form, foundation. This is from a
 10:50:53 9 different deposition, different circumstances than
 10:50:55 10 this case.
 10:50:56 11 MR. COX: This is witness' testimony.
 10:50:57 12 MR. SCHMITT: But it has nothing to do
 10:50:59 13 with this case or these circumstances.
 10:51:01 14 MR. COX: Make your objection.
 10:51:03 15 MR. SCHMITT: Well, I have.
 10:51:04 16 BY MR. COX:
 10:51:04 17 Q What was your answer?
 10:51:04 18 A I still read it?
 10:51:06 19 Q Yes.
 10:51:06 20 A Okay.
 10:51:08 21 It says, "Yeah, our work isn't designed to
 10:51:11 22 work that way."
 10:51:13 23 Q Slow down a little bit.
 10:51:14 24 Read it again, please.
 10:51:15 25 A "Yeah, our work isn't designed to work

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10:51:18 1 that way. We can't just work and then shut down,
 10:51:21 2 go back out and work again. We need to get our job
 10:51:24 3 done from time A to time B so we can start traffic
 10:51:29 4 moving again."
 10:51:32 5 MR. COX: All right.
 10:52:04 6 Mr. Linford, that's all of the questions I
 10:52:06 7 have. Thank you, sir.
 10:52:07 8
 10:52:07 9 EXAMINATION
 10:52:08 10 BY MR. SCHMITT:
 10:52:08 11 Q Mr. Linford, just a little follow-up in
 10:52:10 12 regards to then this testimony that you were asked
 10:52:13 13 to read from a different lawsuit filed by
 10:52:17 14 Mr. Cox --
 10:52:18 15 MR. COX: I don't file lawsuits, my client
 10:52:20 16 does.
 10:52:21 17 BY MR. SCHMITT:
 10:52:21 18 Q Well, this transcript that we are looking
 10:52:23 19 at says that the lawyer asking the questions was
 10:52:29 20 James Cox, Jr.
 10:52:31 21 Do you see that?
 10:52:32 22 A Yes, I do.
 10:52:34 23 Q What you weren't asked to read -- let's
 10:52:36 24 begin with the answer you gave, "Question by
 10:52:39 25 Mr. Cox: Let's talk a little bit about that. Is

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10:52:41	1 it true that there was a constant tension between	10:54:40	1 Q And you commented also to Mr. Cox that
10:52:44	2 the Operating Department that moves the trains, the	10:54:44	2 then employees can also take additional breaks?
10:52:47	3 dispatcher and the Maintenance of Way Department	10:54:48	3 In other words, if this was a member?
10:52:50	4 that maintains the tracks?	10:54:50	4 Tell us what you mean by that.
10:52:53	5 "Answer: No, sir.	10:54:52	5 A That's true. I want to make sure that the
10:52:53	6 "Question: Okay. In your view, everybody	10:54:54	6 employees get at least their 15-minute breaks when
10:52:54	7 works well to get that done?	10:54:56	7 it's hot and that's why we assign the assistant
10:52:57	8 "Answer: Yes, sir."	10:54:59	8 foreman to do that. It's up to the individual
10:52:59	9 Here is my question, then -- in regards to	10:55:02	9 themselves to know how they are feeling. They can
10:53:01	10 this comment about, "When practicable, schedule	10:55:05	10 request at any time to take a break and they will
10:53:04	11 work in hotter areas, cooler months, and/or cooler	10:55:05	11 never be denied that, as well.
10:53:07	12 parts of the day" -- just tell us what do you mean	10:55:06	12 Q That would apply for Mr. Herrera?
10:53:10	13 by -- just explain for us, how does it work on the	10:55:09	13 A Oh, absolutely.
10:53:13	14 Union Pacific Railroad in regards to scheduling	10:55:10	14 Q All right.
10:53:16	15 your work in regards to the heat and things like	10:55:12	15 You indicated that all employees or all
10:53:18	16 that?	10:55:14	16 individuals have some responsibility.
10:53:18	17 A Well, I have no say in scheduling work or	10:55:15	17 Tell us what you mean by that.
10:53:22	18 times. That's from higher above my level. I'm	10:55:17	18 A Well, I can't physically know how that
10:53:24	19 following suit on, "We need to show up at this job,	10:55:19	19 person is feeling. They have to take some
10:53:28	20 work this time frame," trying to get the work done.	10:55:21	20 accountability on themselves, how they are feeling
10:53:31	21 I can mitigate into the workload of the day, make	10:55:23	21 for the day and manage themselves. We can only put
10:53:35	22 sure safe practices are going on, make sure there's	10:55:27	22 the procedures in place for them to try to help
10:53:38	23 cooling stations available, things like that. But	10:55:30	23 them out. We can't physically do what needs to be
10:53:40	24 I have no decision-making on what times we start	10:55:33	24 done for them on how they are feeling, their
10:53:42	25 work or where we work at, for the most part.	10:55:35	25 preparation the night before, how much rest they
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10:53:45	1 Q All right.	10:55:38	1 got and things like that. They need to be
10:53:46	2 Do you have then a procedure where -- do	10:55:40	2 accountable at some level for that.
10:53:49	3 you have a goal for a particular amount of work to	10:55:42	3 Q All right.
10:53:53	4 be done in a day and then you try to work towards	10:55:47	4 In regards to this cleanup crew issue, you
10:53:55	5 that goal?	10:55:49	5 had indicated that -- you gave us some averages on
10:53:55	6 A Absolutely. I think any construction crew	10:55:52	6 the number of people that may be on the quality
10:53:59	7 would have a production goal for the day, so we set	10:55:56	7 control.
10:54:03	8 our standards at a production goal what we want to	10:55:57	8 A Sure.
10:54:07	9 accomplish for the day.	10:55:57	9 Q Right.
10:54:08	10 Q The fact that you have a goal, does that	10:55:59	10 When you used the term, "quality control,"
10:54:10	11 mean that you disregard the heat conditions or	10:56:02	11 just explain to us, what is that? Quality
10:54:13	12 whatever the conditions may be that day?	10:56:05	12 control?
10:54:15	13 A Oh, no, no. Absolutely not. Just because	10:56:05	13 A Quality control -- we want to leave a
10:54:15	14 it's a goal -- that's exactly what it is. It's a	10:56:08	14 product that's 100 percent complete. Quality
10:54:16	15 goal. We are not going to make sure -- we don't	10:56:10	15 control ensures that product is 100 percent
10:54:17	16 have to hit that. It's very common we don't hit	10:56:14	16 complete.
10:54:22	17 our goals. It could be from anything from	10:56:14	17 Q So if Mr. Herrera was working on quality
10:54:25	18 mechanical breakdowns, high heat slowing us down,	10:56:16	18 control on the day of his incident, then, is he
10:54:28	19 things like that.	10:56:19	19 going through and if you find the occasion
10:54:28	20 Q So that I'm clear, when you discussed that	10:56:20	20 where -- I think you said the one machine had about
10:54:30	21 and you are into this extreme heat procedure, that	10:56:24	21 a 90 percent accuracy, so he is looking for those
10:54:33	22 the minimum is the gangs are taking at least	10:56:27	22 situations where maybe a clip was not completely
10:54:36	23 15-minute-an-hour breaks every hour -- the	10:56:29	23 applied, and then he is taking care of that?
10:54:39	24 employees are?	10:56:32	24 A Correct. And -- it wouldn't be every
10:54:40	25 A Yes.	10:56:35	25 single tie. You may go 25, 30 ties before you find

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10:56:39	1 a clip off. And then that's where we try to have	10:58:32	1 heat indexes for the day, when you have your
10:56:42	2 the machine pull the clip off. There could be some	10:58:35	2 morning discussions?
10:56:44	3 hand work in -- for example, if the insulator gets	10:58:37	3 Just generally, what does -- because I
10:56:47	4 broken, you need to take it out with the chisel,	10:58:38	4 don't think you were asked any of this.
10:56:52	5 chisel it up. If it gets taken out with an	10:58:41	5 What's normally covered by those?
10:56:56	6 insulator, sometimes you have to try to manipulate	10:58:42	6 A Well, in our morning job briefings, I
10:56:58	7 it by hand.	10:58:45	7 think it was asked of the timekeeper -- he puts the
10:56:59	8 If the next machine can't clip it on and	10:58:48	8 heat index -- what it's forecast to be -- on there.
10:57:01	9 does the same thing, we have to try to manipulate	10:58:51	9 So we will cover that with the gang in the morning.
10:57:04	10 it by hand to get it on, so there's a little hand	10:58:54	10 So everybody is basically aware that it's going to
10:57:07	11 work on there. If that helps you out.	10:58:56	11 get hot during the day, so they can start managing
10:57:09	12 Q You indicated that individual employees at	10:58:59	12 themselves, start drinking their water early, start
10:57:10	13 the front of the gang -- because this gang is	10:59:01	13 taking care of themselves because it's going to be
10:57:12	14 moving along down a track --	10:59:05	14 hot that day.
10:57:14	15 A Correct.	10:59:06	15 Q What are employees like Mr. Herrera then
10:57:15	16 Q -- and as people at the front are	10:59:08	16 told with regards to projected high heat indexes
10:57:17	17 finishing up, they can come back and work into the	10:59:11	17 and what should they be doing during the day?
10:57:21	18 quality control area?	10:59:12	18 What's the advice given?
10:57:22	19 A Yes.	10:59:13	19 A Drink water.
10:57:22	20 Q If during the day -- if the quality	10:59:15	20 MR. COX: Foundation.
10:57:25	21 control people -- it turns out that they are, for	10:59:16	21 THE WITNESS: Drink water is one of our
10:57:27	22 whatever reason -- maybe there's more work that	10:59:17	22 favorites.
10:57:30	23 needs to be done -- because an inordinate number of	10:59:18	23 BY MR. SCHMITT:
10:57:35	24 clips need to be properly applied -- can other	10:59:18	24 Q Okay.
10:57:37	25 people from other parts of the gang also come in	10:59:18	25 A Make sure you are drinking your water.
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10:57:40	1 and assist in those situations as needed?	10:59:21	1 Q Are you employees routinely reminded of
10:57:43	2 A Oh, absolutely.	10:59:23	2 that throughout the day, also?
10:57:44	3 Q All right.	10:59:25	3 A Oh, absolutely.
10:57:45	4 I mean, do all of the members on the	10:59:26	4 Q All right.
10:57:47	5 gang -- do you all work together and help each	10:59:34	5 Where is the water coming from when you
10:57:48	6 other out to address any needs that arise?	10:59:36	6 say that employees are to be drinking water? How
10:57:51	7 A Yes, in fact, one of the terms I love	10:59:39	7 does that work?
10:57:54	8 using -- especially in new guys coming in, "If we	10:59:40	8 A Every machine out there has a cooler on it
10:57:56	9 all do a little, nobody does a lot." We try to	10:59:43	9 full of water. All of the trucks have water in it,
10:58:00	10 have that across the board.	10:59:47	10 mechanics' booms, supervisors' trucks. So there's
10:58:03	11 Nobody should have to be doing a lot	10:59:50	11 water spread out through the gang.
10:58:03	12 because everybody can do a little. Just do	10:59:52	12 On these big machines, these Harsco
10:58:06	13 yourself what you can do yourself.	10:59:55	13 machines, there could be seven or eight coolers
10:58:09	14 Q And Mr. Herrera would have been aware of	10:59:57	14 spread out through the consist -- so water is
10:58:11	15 all of those types of procedures?	10:59:59	15 readily available anywhere.
10:58:13	16 A Sure. He would have had heard those	11:00:00	16 Q Is water readily available to all
10:58:15	17 things before.	11:00:04	17 employees on these gangs?
10:58:15	18 Q Is that something that's repeatedly	11:00:05	18 A Oh, yeah, absolutely.
10:58:17	19 discussed as part of your -- or routinely discussed	11:00:06	19 Q And these machines that they circulate,
10:58:18	20 as part of your job briefings every morning?	11:00:08	20 you said there's anywhere from 23 to 27 machines
10:58:21	21 A It's brought up by myself every once in a	11:00:12	21 spread throughout the gang?
10:58:23	22 while, foremen, safety captains have brought it up,	11:00:13	22 A Correct. Then usually your machines are
10:58:27	23 yes.	11:00:15	23 within 50 to 100 feet apart throughout the gang.
10:58:27	24 Q What is just the general focus of these	11:00:19	24 Q All right.
10:58:29	25 gangs -- in your gang -- in regards to discussing	11:00:20	25 So would you have expected that

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11:00:21	1	Mr. Herrera would have had water accessible to him	11:02:15	1	break, hold themselves down, whatever they need,
11:00:25	2	at all times?	11:02:17	2	because it's readily available for them.
11:00:25	3	A Yes, there would have been water.	11:02:20	3	Q Are there -- now, does your gang -- does
11:00:27	4	MR. COX: Form and foundation.	11:02:22	4	it have a safety captain?
11:00:29	5	BY MR. SCHMITT:	11:02:24	5	A We do.
11:00:29	6	Q Was that the practice, that all employees	11:02:25	6	Q Who was the safety captain on your gang?
11:00:31	7	have water accessible to them at all times?	11:02:29	7	A Robert Steely -- or "Bobby" Steely.
11:00:35	8	A Absolutely.	11:02:32	8	Q What other types of things does Mr. Steely
11:00:35	9	MR. COX: Same objection. Form and	11:02:35	9	have available, as the safety captain, to address
11:00:36	10	foundation.	11:02:37	10	when you have hot conditions?
11:00:37	11	BY MR. SCHMITT:	11:02:39	11	A Bobby has basically -- he has got all of
11:00:37	12	Q What other types of things are	11:02:42	12	the resources available. His main job is just to
11:00:39	13	available -- routinely available to these gangs in	11:02:45	13	go throughout, make sure -- help us, the
11:00:40	14	addition to water to help address when there's high	11:02:48	14	supervisors, following procedures, talking to the
11:00:43	15	heat conditions on a particular day?	11:02:50	15	guys, what he is doing. He has got access to his
11:00:45	16	A We set up -- and he showed me a picture of	11:02:53	16	vehicle, he has the cooling stations, loaded with
11:00:47	17	one of the cooling stations. Creating shade when	11:02:56	17	extra fruit, Gatorade, cooling towels, neck shades.
11:00:51	18	there's no shade in the environment readily	11:03:02	18	Everything we can get for them, basically.
11:00:51	19	available. There's plenty of vehicles throughout	11:03:04	19	Q So Mr. Steely would have those types of
11:00:54	20	the gang that are always around. They can jump in	11:03:06	20	things available for any --
11:00:57	21	the AC. The big Harsco actually can carry 12 to 15	11:03:08	21	A Yes.
11:01:04	22	employees and it has AC, as well. We try to make	11:03:08	22	Q -- members on the crew, gangs?
11:01:07	23	it as much as we can that they go get out of the	11:03:11	23	A Yes. We assigned the truck to Mr. Steely
11:01:11	24	temperature, they can.	11:03:13	24	so he has got everything available throughout the
11:01:12	25	Q So in addition to these 23 to 27 machines,	11:03:17	25	gang.
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11:01:14	1	are there trucks or other vehicles in addition to	11:03:17	1	Q You said fruit, Gatorade --
11:01:17	2	those?	11:03:20	2	A Sqwinchers you put in your water, sleeves
11:01:18	3	A That's what I said, trucks -- "vehicles,"	11:03:22	3	you can put on your arms so your arms don't get
11:01:20	4	I should say.	11:03:25	4	burned. He has got neck shades, cooling towels to
11:01:21	5	Q Trucks, vans, things like that?	11:03:28	5	put around -- so several different items.
11:01:24	6	A Trucks, vans, busses have AC, yeah.	11:03:30	6	Q If an employee like Mr. Herrera wanted to
11:01:26	7	Q How many additional pieces of equipment	11:03:32	7	use any of these resources available, would they
11:01:29	8	like that, tax returns and vans and busses can be	11:03:35	8	just have to ask?
11:01:32	9	available or are commonly available on your gang?	11:03:36	9	A Yes, they are readily available for
11:01:36	10	A Well, on a big gang like this, we have got	11:03:38	10	morning job briefing every day and also in a truck
11:01:40	11	two busses, two boom trucks, four or five mechanic	11:03:41	11	with Mr. Steely.
11:01:45	12	trucks, two supervisors' trucks, a foreman truck.	11:03:43	12	MR. SCHMITT: Okay.
11:01:49	13	Quite a few.	11:03:44	13	That's all. Thank you very much.
11:01:50	14	In addition, probably nowadays a quarter	11:03:46	14	MR. COX: All right.
11:01:52	15	to half of the machines had AC, as well.	11:03:47	15	That prompts a few questions. But we have
11:01:56	16	Q So is the AC running in all of these	11:03:48	16	only got five minutes left on this tape, so we are
11:01:58	17	vehicles and all of this equipment?	11:03:52	17	going to change the tape.
11:01:59	18	A Sure.	11:03:54	18	THE VIDEOGRAPHER: This is the end of
11:02:01	19	MR. COX: Form and foundation.	11:03:55	19	media number 1. We are off the record.
11:02:02	20	BY MR. SCHMITT:	11:04:24	20	(Pause in the proceedings.)
11:02:02	21	Q What are employees like Mr. Herrera	11:04:28	21	MR. COX: Mr. Smith and I agree that the
11:02:04	22	advised in regards to having access to any of these	11:04:30	22	video portion does not have to have the time or
11:02:06	23	other trucks and vans and busses and machines?	11:04:34	23	date on it.
11:02:11	24	A Employees are advised, when they are	11:04:35	24	MR. SCHMITT: Agreed.
11:02:13	25	starting to feel any symptoms, that they can take a	11:05:20	25	(Pause in the proceedings.)

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11:05:20	1	THE VIDEOGRAPHER: This is the beginning	11:06:55	1	Mr. Herrera?
11:05:21	2	of media number 2. We are back on the record.	11:06:55	2	A I do not know if that's what occurred.
11:05:23	3		11:06:57	3	Q So we agree that these machines, all of
11:05:23	4	FURTHER EXAMINATION	11:06:59	4	these people on the gang when the gang is working,
11:05:23	5	BY MR. COX:	11:07:02	5	they have jobs to do?
11:05:23	6	Q Mr. Linford, I'm going to work backwards	11:07:03	6	A Uh-huh.
11:05:25	7	on some of the questions that Mr. Smith asked you	11:07:04	7	Q Supervisors to supervise, machines to do
11:05:28	8	about the trucks and vans and machines, those	11:07:06	8	their work, et cetera?
11:05:33	9	trucks and machines can be spread out anywhere from	11:07:07	9	A That's correct.
11:05:36	10	a quarter to three quarters of a mile, correct?	11:07:08	10	Q And that could be spread out over one
11:05:39	11	A Correct.	11:07:09	11	quarter to three quarters of a mile?
11:05:39	12	Q So they are not readily accessible, they	11:07:12	12	A That's correct.
11:05:42	13	are a half mile away?	11:07:12	13	Q All right.
11:05:44	14	If you are on the cleanup crew, you are at	11:07:15	14	You told us that members of the gang can
11:05:47	15	the tail end of the gang?	11:07:19	15	come back to assist the cleanup crew.
11:05:48	16	A Not necessarily. They can be readily	11:07:23	16	Do you know if that ever occurred on
11:05:50	17	accessible. If we have radio communication, they	11:07:24	17	July 24th or 25th or 26th?
11:05:52	18	could go talk to the assistant foreman, and the	11:07:27	18	A I don't know if it did or did not.
11:05:53	19	assistant foreman could say, "Hey, mechanic gang,	11:07:30	19	Q If every employee on the gang that was
11:05:53	20	can you come over here for a second?" So it could	11:07:32	20	working on the cleanup crew on July 25th and 26th
11:05:57	21	be there readily available.	11:07:36	21	says, "Nobody ever came back to help him out," you
11:05:59	22	Q Bring his truck to give the employee an	11:07:39	22	wouldn't have any reason to dispute that, would
11:06:02	23	opportunity to get out of the heat and into the	11:07:42	23	you?
11:06:03	24	cool and into the air conditioning?	11:07:42	24	A No, I would not.
11:06:05	25	A Yes.	11:07:43	25	Q Now, when you talk about the gang when the
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11:06:05	1	Q And you would expect an employee or	11:07:45	1	machine is not working, they have to remove these
11:06:07	2	supervisor to do that if he needed that?	11:07:50	2	clips by hand; is that right?
11:06:10	3	A Oh, absolutely.	11:07:52	3	A Yes, if the P-car itself can't pull a clip
11:06:10	4	Q All right.	11:07:55	4	off, then the next option is to pull it off by
11:06:10	5	But the machines cannot move?	11:07:59	5	hand.
11:06:12	6	A The machines can move backwards and	11:07:59	6	Q Ideally you want the P-car to do it?
11:06:14	7	forwards.	11:08:01	7	A Absolutely.
11:06:14	8	Q Do they move backwards to provide air	11:08:02	8	Q But if the P-car is not using or misses a
11:06:17	9	conditioning for members of the gang behind them?	11:08:06	9	clip, then they have to get down and do it by hand?
11:06:20	10	A Do they? No. But can they? Yes.	11:08:09	10	A Uh-huh.
11:06:24	11	Q But is it a normal practice on a gang for	11:08:10	11	Q When they are removing a clip from a rail,
11:06:26	12	machines to back up for somebody to --	11:08:12	12	how close are they to the rail?
11:06:29	13	A Let me throw a situation out.	11:08:14	13	A How close are they?
11:06:30	14	Q No, no, just answer the question.	11:08:17	14	Well, they are using a tool where you are
11:06:32	15	MR. SCHMITT: He is answering the	11:08:19	15	standing up, you apply a pull-down lever.
11:06:32	16	question.	11:08:21	16	Q Standing next to the rail?
11:06:33	17	THE WITNESS: I am answering. But let me	11:08:22	17	A Yes, within a foot of the rail, probably.
11:06:34	18	ask you this -- if there's an employee back there	11:08:25	18	Q And the rail is -- temperature of the rail
11:06:36	19	working and cleaning up, and say, there's a speed	11:08:29	19	is 30 degrees higher than the ambient temperature
11:06:40	20	swing up ahead of me. Employee So-and-So might be	11:08:32	20	if it's --
11:06:44	21	jumping in the AC. The operator would back up, let	11:08:33	21	A Could be. Not saying it is, but it could
11:06:47	22	the employee in his cab with him and then continue	11:08:36	22	be.
11:06:51	23	on, so it could be practicable.	11:08:36	23	Q And that's --
11:06:53	24	BY MR. COX:	11:08:37	24	A Your car in a parking lot, the hood could
11:06:53	25	Q Do you know if that's what occurred with	11:08:40	25	be 30 degrees higher than it is on the asphalt, as

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11:08:43	1 well, when you are standing next to a truck.	11:10:18	1 In addition to pickups, or trucks,
11:08:46	2 Q Great point.	11:10:19	2 busses -- whatever else might be spread out
11:08:47	3 A Okay.	11:10:21	3 throughout the area?
11:08:53	4 MR. COX: Okay. That's all I have. Thank	11:10:22	4 A Correct.
11:08:55	5 you, sir.	11:10:23	5 Q All right.
11:08:56	6 THE WITNESS: All right.	11:10:24	6 If you had to use your radio -- if there
11:08:57	7 MR. SCHMITT: Just a follow-up on what	11:10:26	7 wasn't something that was right next to you, given
11:08:58	8 questions Mr. Cox had.	11:10:28	8 all of this equipment that is throughout this area,
11:09:00	9 THE WITNESS: No problem.	11:10:31	9 if you had to use your radio to call to bring a
11:09:00	10	11:10:34	10 truck over, in your experience, what's the average
11:09:00	11 FURTHER EXAMINATION	11:10:36	11 response time to get something next to an employee
11:09:00	12 BY MR. SCHMITT:	11:10:40	12 where they could get into an air-conditioned
11:09:00	13 Q With regards to the steel itself, as you	11:10:42	13 vehicle?
11:09:03	14 commented, if you touched the hood of your car,	11:10:42	14 A It depends on the availability of the road
11:09:08	15 obviously, that's hotter when it's sitting in the	11:10:44	15 access. But usually most of the tracks have road
11:09:10	16 sun, right?	11:10:47	16 access. It's within minutes.
11:09:11	17 A Yes.	11:10:49	17 Q Minutes?
11:09:11	18 Q All right.	11:10:50	18 A Within minutes.
11:09:11	19 Does Union Pacific then take that into	11:10:51	19 MR. SCHMITT: All right. That's all I
11:09:13	20 account, the fact that the steel itself -- on a	11:10:52	20 have.
11:09:16	21 hot, sunny day, the steel rail can be hotter -- do	11:10:55	21
11:09:19	22 you take that into account in regards to your work,	11:10:55	22 FURTHER EXAMINATION
11:09:22	23 what you are doing?	11:10:55	23 BY MR. COX:
11:09:23	24 A No. An example I would use, "Would you	11:10:55	24 Q P-car cab is air conditioned, isn't it?
11:09:25	25 pay attention to it if you are going to stand next	11:10:58	25 A The model that you showed me.
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11:09:27	1 to your vehicle because your vehicle is hotter?"	11:10:59	1 Q Okay.
11:09:30	2 Q Yeah.	11:11:00	2 A That one was air conditioned.
11:09:31	3 A No.	11:11:02	3 Q Is that the one --
11:09:32	4 Q The question is do you then address	11:11:04	4 A Now, I don't believe that was one we had
11:09:33	5 whatever the heat index is for the people that are	11:11:06	5 on the gang. I don't believe the one we had on the
11:09:36	6 on the track working near the track --	11:11:09	6 gang was air conditioned at the time.
11:09:39	7 A We take the heat index from between the	11:11:10	7 Q So some are and some aren't?
11:09:41	8 rails on the tracks and off it.	11:11:12	8 A Some are, some aren't. I don't remember
11:09:45	9 Q And then just your work schedule and	11:11:14	9 what type of P-car we were using at that time.
11:09:48	10 breaks and all that accordingly?	11:11:18	10 Q We would have to leave that to the
11:09:50	11 A Right.	11:11:21	11 operator of the P-car to answer that for us,
11:09:51	12 Q All right.	11:11:23	12 whether it was air conditioned or not?
11:09:52	13 The question about the amount of space	11:11:25	13 A He could have -- he may have a better
11:09:54	14 that a gang could be stretched out from one quarter	11:11:26	14 memory of it to remember.
11:09:57	15 to three quarters of a mile -- do you recall that?	11:11:27	15 Q And that's another reason why you would
11:09:59	16 A Yes.	11:11:28	16 want the P-car used rather than doing the work
11:10:00	17 Q Am I correct that if it's up to three	11:11:32	17 manually, particularly in these heat conditions?
11:10:02	18 quarters of a mile -- within that three quarters of	11:11:35	18 A Because of the AC?
11:10:04	19 a mile, you are going to have the 23 to 27 pieces	11:11:36	19 Q Yeah.
11:10:07	20 of rail equipment itself?	11:11:37	20 A No, it makes sense all of the way around
11:10:10	21 A Yes.	11:11:39	21 to have a machine do it versus by hand. Regardless
11:10:10	22 Q In --	11:11:42	22 of AC or heat in the winter or anything, you would
11:10:11	23 A With the majority of the vehicles, if	11:11:45	23 want to use the equipment to its fullest
11:10:13	24 there's access -- like road access next to it.	11:11:48	24 responsibility.
11:10:18	25 Q All right.	11:11:50	25 Q Thank you.

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11:11:51 1 A You bet.
 11:11:51 2 Q Okay.
 11:11:52 3 It's going to take me a minute to gather
 11:11:54 4 these up.
 11:12:02 5 Let's see, who is next.
 11:12:02 6 THE REPORTER: Do you -- do we want to do
 11:12:04 7 a stipulation?
 11:12:05 8 MR. COX: Mr. Linford, you have the right
 11:12:06 9 to read and sign this deposition, or you can waive
 11:12:11 10 reading and signing. Mr. Schmitt's office will get
 11:12:12 11 you a copy to review it. It's totally your choice
 11:12:18 12 and Mr. Schmitt can coordinate that with you
 11:12:21 13 however you want.
 11:12:21 14 THE WITNESS: I don't care.
 11:12:24 15 MR. SCHMITT: We are done.
 11:12:25 16 THE VIDEOGRAPHER: This is the end of
 11:12:26 17 media number 2 and marks the conclusion of today's
 11:12:29 18 deposition of Joe Linford. We are off the record.
 11:12:32 19 (Deposition concluded at 11:12 a.m.)

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 3
 4
 5
 6
 7
 8 I, JOSEPH LINFORD, declare under
 9 penalty of perjury under the laws of the
 10 State of California that the foregoing is
 11 true and accurate.
 12 Executed at _____,
 13 California, this _____ day of _____,
 14 2016.
 15
 16
 17
 18
 19
 20
 21 _____
 JOSEPH LINFORD
 (Signature waived)

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1 REPORTER'S CERTIFICATE
 2
 3 I, VICTORIA IMHOF WERTZ, RPR, CSR NO.
 4 7999, Certified Shorthand Reporter, certify:
 5 That the foregoing proceedings were
 6 taken before me at the time and place therein set
 7 forth, at which time the witness was put under oath
 8 by me;
 9 That the testimony of the witness and
 10 all objections made at the time of the examination
 11 were recorded stenographically by me and were
 12 thereafter transcribed;
 13 That the foregoing is a true and
 14 correct transcript of my shorthand notes so taken.
 15 I further certify that I am not a
 16 relative or employee of any attorney or of any of
 17 the parties, nor financially interested in the
 18 action.
 19 Dated this 21st day of June, 2016.
 20
 21
 22
 23 _____
 24 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999
 25

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1 REPORTER CERTIFICATION OF CERTIFIED COPY
 2
 3
 4
 5 I, VICTORIA IMHOF WERTZ, RPR, CSR
 6 No. 7999, a Certified Shorthand Reporter in
 7 the State of California, certify that the
 8 foregoing pages 1 through 112 constitute a
 9 true and correct copy of the original
 10 deposition of JOSEPH LINFORD, taken on
 11 June 9th, 2016.
 12 I declare under penalty of perjury
 13 under the laws of the State of California
 14 that the foregoing is true and correct.
 15 Dated this 21st day of June,
 16 2016.
 17
 18
 19
 20
 21 _____
 22
 23 VICTORIA IMHOF WERTZ, RPR, CSR No. 7999
 24
 25